New York City Council Hearing
Committee on Justice System

Oversight – Preparing for the Implementation of
Bail, Speedy Trial, and Discovery Reform
May 22, 2019

Testimony of Mayor's Office of Criminal Justice

Good Afternoon Chair Lancman and members of the Justice System Committee. I am Susan Sommer, General Counsel to the Mayor's Office of Criminal Justice (MOCJ). On behalf of the Office, I thank you for the opportunity to testify today.

MOCJ advises the Mayor on criminal justice policy and is the Mayor's representative to the courts, district attorneys, defenders, and state criminal justice agencies, among others. MOCJ designs, deploys, and evaluates citywide strategies to increase safety, reduce unnecessary arrests and incarceration, improve fairness, and build the strong neighborhoods that ensure enduring public safety.

We appear before you today to discuss the opportunities presented by key criminal justice reforms—particularly relating to bail—enacted as part of the State's budget bill, and to share with you some of the City's efforts to date to facilitate implementation of these reforms by their January 1, 2020, effective date.

Broad in their scope and impact, these reforms enact significant changes throughout the pretrial process for persons accused of crimes in New York State. Under the new law, cash bail and pretrial detention will remain available as options only for the most serious offenses, including sex offenses and most violent felonies. The new law requires expanded use of desk appearance tickets rather than custodial arrests for most misdemeanors and class E-felonies, with certain exceptions. Unchanged is the mandate that all decisions regarding pretrial release or detention be based on consideration of an accused's likelihood to return to court.

The State budget bill also enacts important changes to the State's laws on criminal discovery, including a new statutory timeline by which prosecutors and defense attorneys must meet their mutual disclosure obligations, as well as speedy trial reforms.

The bail reform legislation can be expected to drive the City further on a path well underway. Already New York City judges release on their own recognizance approximately 70% of the individuals they arraign. At the same time, New York has enviable appearance rates, with about 86% of individuals returning for all their court

appearances. The recently enacted bail reforms can be expected to expand release, further reducing bail and detention. It can also be expected to increase use of alternatives that—as evidence and our City's own experience show—are highly effective at ensuring an accused's continued appearance in court. These options include court appearance reminders; support in the community by a not-for-profit agency providing supervised release; and reasonable restrictions on travel.

These reforms thus come against a backdrop of increasing safety and decreasing use of jail in our City, a product of the concerted effort of many individuals, organizations, and criminal justice partners throughout New York. Today more New Yorkers can learn, earn, and play more safely in their communities than they could five years ago, when this administration began developing and deploying some of its signature criminal justice initiatives, including those related to reducing the number of people held in pretrial detention. In this span, New York City has achieved the lowest incarceration rate of all large cities in the United States while remaining the safest. When Mayor Bill de Blasio's administration began on January 1, 2014, over 11,000 people were in the City's jails every day. Today, that number is in the range of 7,500, more than a 30% decline, and the fewest number of incarcerated people since 1980. At the same time, serious crimes have fallen by 14%. By democratizing the development and deployment of our criminal justice initiatives, the City has maintained a careful balance between safety and fairness.

The recent statewide criminal justice reforms have presented us with an opportunity to press forward yet further on these important fronts, building off the backbone of initiatives already well underway in New York. MOCJ is working hard with our criminal justice partners to ensure the City is ready on January 1, 2020, when the new measures take effect. The City's work toward implementation of these new changes involves enhancing existing initiatives aimed at reducing unnecessary pretrial detention, as well as coordination of the efforts of multiple justice partners, including the courts, the police department, district attorneys' offices, criminal defense providers, and service providers.

Central to our efforts to respond to the new law's provision for non-monetary conditions for release is adapting and building off of supervised release, a nationally-recognized model for community-based supervision of pretrial defendants spearheaded by our office and initially funded by the Manhattan District Attorney. Since its inception, the program has served over 12,000 people, and in 2018 alone prevented over 4,500 people from being admitted to jail. The program has expanded, originating as a pilot project, then extending its scope to all five boroughs, becoming a fixture of criminal courts citywide.

New York City courts will soon have at their disposal another important tool, an updated CJA release recommendation system, to help judges assess who can be both released on

their own recognizance and counted upon to return for their pretrial court appearances. This should be a particularly valuable tool as bail reform takes effect. The updated system uses state-of-the art, data-based analytical techniques to improve accuracy while avoiding the calcification of historical criminal justice inequities. It is being developed with deep engagement and consultation with the courts, defenders, prosecutors, and affected organizations and individuals. In pilot phase, the updated system has already received endorsement from Court of Appeals Chief Judge Janet DiFiore, who in her 2019 State of the Judiciary Address stated that "[o]ne of the key purposes of this tool is to address disparate impacts on racial groups at this critical pre-trial state." She noted that the new system "will enable our judges to make fair, accurate and responsible determinations to avoid unnecessary pretrial detention."

The combination of these reforms can be expected to dramatically reduce our jail population. In response to these anticipated reforms, we updated our borough-based jail plan to reflect an anticipated reduction in the jail census from 5,000 down to a population of 4,000. In addition to building a smaller system, we also announced that we can complete construction of these four borough-based jails by 2026 – ahead of schedule.

In recent weeks MOCJ has convened many meetings and discussions among our criminal justice partners to coordinate preparations for implementation of the new bail, discovery, and other reforms, with extensive engagement, planning, and collaboration to come. We are also using our existing coordination bodies, including the Justice Implementation Task Force and Supervised Release Steering Committee, as additional forums in which to exchange ideas, share concerns, identify needs, and develop responses. We stand at a moment of tremendous opportunity; we readily accept our shared responsibility with our partners to work to get it right.

We thank the Council for its attention to these issues, for your support and contributions to the City's criminal justice reforms, and for the opportunity to engage with you further today and in the weeks ahead. We also thank the New York State legislature and Governor Cuomo for enacting these important criminal justice reforms.

JLUSA
justleadershipusa.org

May 22, 2019

Testimony to the City Council Justice System Committee
Submitted by Fred Parker, member, JustLeadershipUSA

Dear Chairperson Lancman and Committee Members,

Thank you for the opportunity to submit testimony today, and your recognition that New York City must be a model for decarceration and accountability to impacted communities. Bail, discovery and speedy trial legislation passed in the New York State budget because of advocacy by people including our members leading on the #FREEnewyork campaign, who have experienced - **firsthand** - the trauma of pretrial jailing.

To be accountable to the communities most devastated by money bail and pretrial incarceration, City Council must commit to three principles. **First, City Council must commit to maximizing decarceration.** On its own, the new bail legislation will vastly reduce the number of people who are subject to the injustice of pretrial jailing, reducing the total number of people incarcerated in city jails by at least 25%. This is a powerful step towards ending the era of mass incarceration in our city and moving us towards the closure of Rikers Island. JustLeadershipUSA launched the #FREEnewyork campaign to support closure of Rikers and we are proud that our #CLOSErikers members joined people from across the state in Albany to advocate for pretrial overhaul.

However, implementation matters. We can and must push for an even greater expansion of pretrial liberty by working to limit the use of bail even in cases where judges can still legally set it, and to create opportunities for release. Right now, the Mayor's Office of Criminal Justice prohibits some people, on the basis of charge, from being released to pretrial services. Categorical and charge-based restrictions that keep people locked up, prevent the system from allowing all people the same opportunity for justice and fairer trials. This must be changed to maximize pretrial liberty. City Council must insist that there be no categorical or charge-based restrictions on pretrial services.

Second, City Council must limit net-widening. In 2018, 72% of New Yorkers were released on their own recognisance (ROR), meaning they were given their next court date and allowed to return to their families and jobs. As a young, Black person without a lot of money - like many of those subjected to these systems - I am not a flight risk. I do not have a passport. I do not have a private jet. I do not have access to a plastic surgeon who is going to change my face.

As is evident in the city's data[1], the vast majority of people do **not** need supervision to ensure they come back to court. Given this, City Council must work to **maximize ROR** and ensure that we do not see an increase in pretrial conditions or carceral supervision under the new legislation. How can City Council do this? First, City Council must push New York City's Criminal Justice Agency (CJA) to move from a **risk-assessment model to a needs-assessment model.** Rather than try to assess which of our loved ones is a "risk," we should instead be asking what support each person needs. For example, CJA's new risk assessment tool penalizes people who do not have a phone (assigning them a higher "risk" score). Under a "needs assessment" model, CJA would see this as a need and work to **provide** phones instead. Second, as CJA rolls out their new assessment tool, City Council should insist there is a transparent, community-centered process for evaluating that tool.

The punitive, onerous nature of parole and probation is well documented - and acknowledged by City Council with the the resolution in support of the Less is More Act. We must maximize ROR, and in the cases where someone is released to pretrial services, ensure that pretrial services does not in any way come to resemble parole. To do this, City Council must establish additional limitations on the use of harmful pretrial conditions, including electronic monitoring and mandatory drug testing, neither of which have been part of New York's pretrial model to date.

The possibility of expansive use of electronic monitors should alarm everyone in this room. If ever there was big brother technology, electronic monitors are it. We have seen the harm they do in the parole system. When a dear friend of mine was on parole, his ankle monitor malfunctioned and the police showed up at the home he shared with his grandmother in full-blown SWAT mode, terrifying his elderly grandmother. We cannot allow electronic monitors to become a part of the pretrial status quo and encourage further incursion into already overpoliced communities of color. A person who is released pretrial has not been convicted. Therefore, they should have as few restrictions as possible during their release. Being on an electronic monitor hinders a person on pretrial release from carrying on with their life and may, therefore, pressure them to take a plea bargain. They should not be subjected to this pressure.

We must be looking to reduce the traumatizing contact New Yorkers have with the criminal legal system altogether. Under the new legislation, the police are required to issue field appearance tickets for the vast majority of violations, misdemeanors and E felonies rather than making a custodial arrest. This is a powerful component of the legislation as it will save New Yorkers from the traumatizing experience of a physical arrest. City Council must require training for police departments to implement appearance ticket portion of the legislation and ensure oversight over NYPD. Additionally, they must mandate that NYPD track and make public all instances when an officer does not issue an appearance ticket, including the reason why an appearance wasn't issued, to ensure there is not an abuse of the exceptions in the new mandate.

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[1]https://issuu.com/csdesignworks/docs/cja_rwm_final

Finally, City Council must commit to community investment and community accountability. In order to have an accountable implementation process, City Council must set up a pretrial implementation committee that includes community organizations and impacted people. Over the past forty years, jail has become the catchall for failures of policy and social support - no longer. As these reforms reduce the number of people incarcerated pretrial, we must have dedicated reinvestment into communities. As Black and brown New Yorkers know, jail does not produce safety. Housing, education, healthcare, and jobs are the key to safety and justice.

Please let me know if you have any questions.

Sincerely,

Fred Parker,
Member
JustLeadershipUSA

For additional questions or comments, please reach out to Katie Schaffer at katie@justleadershipusa.org or 646-265-2044.

NYCLU
NEW YORK CIVIL LIBERTIES UNION

125 Broad Street, 19th Floor
New York, NY 10004
212.607.3300
212.607.3318
www.nyclu.org

Testimony of the New York Civil Liberties Union
Before City Council Committee on Justice System
Regarding the Oversight of the City's Implementation of Bail, Speedy Trial, and Discovery Reform

May 22, 2019

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony to emphasize necessary steps to ensure bail, discovery, and speedy trial reforms are implemented in New York City according to their purpose: to overhaul harmful pretrial jailing practices.

I. Introduction

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and approximately 200,000 members and supporters. The NYCLU's mission is to defend and promote civil liberties and civil rights. We work to ensure that the core values and principles of equality, liberty, and due process are more fully and consistently realized in the lives of all New Yorkers. In pursuit of these principles we fight for the dignity of all people, with particular attention to the pervasive and persistent harms of racism.

We are deeply committed to ensuring equal protection of the law and realizing the promise that every New Yorker is presumed innocent until proven guilty. Fundamental to this effort is overhauling statewide pretrial practices and procedures due to their inherent failures to ensure the presumption of innocence and meaningful due process for all.

II. Pretrial Reforms that Passed in the State Budget

Today, the State of New York cages thousands of people prior to trial largely because of the requirement to post money bail as a condition of release. Individuals who have not been convicted of a crime account for 67 percent of the average daily jail population statewide.[1] Oftentimes, due to unfair criminal discovery laws, while people await trial they are unable to see

[1] Vera Institute of Justice, *Empire State of Incarceration* (Dec. 2017), https://www.vera.org/state-of-incarceration/data-clearinghouse.

basic information about their case and the charges filed against them, even upon receiving an offer to plead guilty and forfeit their constitutional rights to trial. For many, the inability to post bail has led to pretrial incarceration, with harsh, life-altering consequences – including the loss of jobs, housing, benefits, and even child custody. These harms are borne disproportionately by persons of color. And for the few individuals who choose to exercise their right to trial, these harms can grow with every month and sometimes every year it takes for trial to commence due to current laws that permit prosecutors to control and manipulate trial schedules.

We are pleased that Governor Cuomo and state lawmakers acknowledged these inequities in our state's existing pretrial practices and passed legislation in the FY2020 budget to address the inherent injustices worked by money bail, unfair discovery-exchange practices, and loopholes in our speedy trial calculations. As passed, the laws should, in short, do the following:

- Protect pretrial liberty for people charged with most misdemeanors, nonviolent felony offenses, and two violent felony offenses—charges that collectively account for the majority of arrests;
- Require the early exchange of open-file discovery from the prosecution to defense in all cases within 15 days of arraignment; and
- Hold prosecutors accountable for making certain disclosures before they can declare readiness for trial.

III. Needed Areas for Oversight

Because of the city's pretrial practices, we urge the City Council to do everything in its power and oversight authority to ensure the implemented pretrial reforms have the greatest decarceral effect and achieve true due process for all accused of a crime.

In doing so, we recommend the following actions:

- Ensure robust supplemental funding for pretrial services, diversion programs, community-based programs and solid reinvestment in housing, healthcare, and education programs.
- Prevent practices that may lead to net-widening and unintended consequences of sustained pretrial jailing practices.
    - Work with the Office of Court Administration to ensure that judges are complying with the mandate to consider ability to pay when judges set bail.
    - Work with the Criminal Justice Agency and the Mayor's Office of Criminal Justice to place additional limitations on the use of harmful pretrial conditions, including establishing stringent electronic monitoring restrictions and barring drug testing as a pretrial condition.
- Demand that stakeholders begin implementing state reforms now.

- Work with the New York Police Department to ensure they change their police practices now to effectively implement appearance ticket provisions of the bill.
- Work with District Attorney offices to ensure they begin allocating funding and resources for implementing discovery and bail reforms now (i.e. stop asking for bail in misdemeanors and nonviolent felony cases) and recommending access for as many people as possible to diversion programs.

- Track data on case outcomes, including who is being subject to pretrial detention and for how long, patterns in prosecutorial charging, and the time it takes for case disposition.

As a civil liberties organization, these reforms are of paramount importance to us. The city cannot afford to continue to jail people based on prejudicial biases, wealth-based factors, and inadequate due process protections. Our lives, civil rights, human rights, and civil liberties are at stake.

IV. Conclusion.

The City shares in the responsibility to ensure that these overdue pretrial reforms actually achieve the goal of decarceration and that all New Yorkers enjoy the presumption of innocence regardless of race and wealth. In doing so, the city must ensure that the courts, prosecutors, pretrial services agency, and police are held accountable for complying with the spirit and letter of the new pretrial laws. The NYCLU urges you to support early and effective implementation of the new state laws, and continue to work toward the broader goal of overhauling pretrial jailing practices. We thank the committee for the opportunity to testify on these important matters.

A MORE JUST NYC

Testimony of Zachary Katznelson, Policy Director,
Independent Commission on NYC Criminal Justice and Incarceration Reform
Before the New York City Council Committee on the Justice System

Preparing for the Implementation of Bail, Speedy Trial, and Discovery Reform
May 22, 2019

My name is Zachary Katznelson, Policy Director at the Independent Commission on New York City Criminal Justice and Incarceration Reform, often known as the Lippman Commission after our chairperson Judge Jonathan Lippman. Thank you for the opportunity to testify.

The pretrial reforms recently passed in Albany will decarcerate our jails and bring us much closer to shutting Rikers Island and the Barge. Bail reform makes significant progress towards ensuring a person's freedom is not determined by his or her wealth. Discovery reform should increase early felony dismissals and charge reductions by helping all parties quickly realize when the evidence is weak, and promote early felony pleas when all parties realize that the evidence is strong. Speedy trial reform should reinforce discovery provisions and tighten case processing times, though more work certainly remains in that key area.

Ensuring these laws have maximum positive impact will require the close attention of all relevant parties, including the judiciary, district attorneys, defenders, the police and others. While the laws raise myriad issues, we highlight four areas where the City should focus.

1. **Ensure sufficient supervised release and alternative-to-incarceration options are available and include many levels of supervision and intensity.** The City should explore extending these programs to more detention-eligible charges. As the programmatic options expand, it is important that supervised release be considered only for those defendants who truly require pretrial oversight. People should be released on their own recognizance when safely possible. At the same time, when cases are eligible for supervised release, the use of bail should be minimized. In developing additional programmatic options, special attention should be paid to programs for women, young people, people who are LGBTQ, people with mental illness, and people who suffer from an addiction. Programs should include supportive housing options.

2. **Create a centralized alternative-to-incarceration office in each borough courthouse to assess defendants and coordinate services.** The offices should brief judges, district attorneys, and defenders on available programs, including the population(s) served, the types of services offered, return-to-court rates and other relevant outcomes. These parties should be informed regularly of any changes to the roster of programs. The office should also maintain a current list of open program slots for specific populations, to facilitate timely placement of people in appropriate diversion programs. From time to time, the office should report to the Council and the Mayor's Office of Criminal Justice regarding any populations' needs that are not being regularly met by existing programs.

3. **Ensure robust pretrial services are available, especially for people who are homeless, have mental illness and/or addiction issues.** Adequate pretrial services staff

should be hired and trained to: administer ability-to-pay assessments to everyone eligible for bail, including for partially and unsecured bonds, similar to the Bail Assessment Pilot operated by the Vera Institute; maintain a presence in the courtroom to aid judges in making bail and release decisions; help people pay bail as needed; and provide people notice of upcoming court dates. Pretrial services social workers should be assigned to work directly with the most at-risk people. Pretrial services staff should work with the Department of Homeless Services and other relevant City agencies to ensure people who are homeless receive required reminders of court dates. This might include provision of prepaid cell phones.

4. **Ensure the Police Department and the Office of Chief Medical Examiner take all necessary steps to deliver discovery materials to prosecutors in a timely manner.** Too often, district attorneys are delayed in providing evidence to the defense because City agencies are slow to provide it to prosecutors. The Council should ensure the relevant agencies have a clear plan in place to swiftly process and deliver discovery electronically, permitting district attorneys to meet required timelines. The Council should secure funding for any technology necessary to this process.

Given the critical importance of the legislative reforms to the application of justice and the reduction of the City's jail population, we would request that the Council hold regular hearings to explore their implementation.

Thank you for your time and consideration.

BROOKLYN COMMUNITY BAIL FUND

Brooklyn Community Bail Fund
195 Montague Street, 14th Floor
Brooklyn, NY 11201
347-391-6299

TESTIMONY OF:
Zoe Adel, Advocacy and Policy Associate, Brooklyn Community Bail Fund

PRESENTED BEFORE:
The New York City Council, Committee on the Justice System

May 22, 2019

Thank you to the Committee on the Justice System for inviting us to testify on the implementation of recently passed statewide bail, speedy trial and discovery reforms. While New York State's bail reform legislation failed to completely eliminate money bail, falling short of what New Yorkers deserve and what elected officials promised, we appreciate the opportunity to offer our insight to help prepare for the implementation of bail reform in New York City to ensure meaningful decarceration.

The Brooklyn Community Bail Fund is the largest charitable bail fund in the country. We've paid bail for over 4,200 people to date who would otherwise be jailed pretrial because they cannot afford a few hundred dollars to purchase their freedom. Our intervention means that presumptively innocent people are not jailed pretrial for their poverty alone or forced to plead guilty just to go home. We pay bail as a stopgap measure to help reduce the number of people who are subjected to unspeakable harm because of the bail system. As we all are aware, money bail is fundamentally unfair and coercive. The same system that let Harvey Weinstein walk free after posting $1 million bail also keeps homeless and other low-income New Yorkers caged behind bars, separated from family and subjected to inhumane jail conditions. Money bail drains wealth and resources from Black and Brown communities that have already suffered decades of disinvestment. While the bail reform legislation eliminates money bail for most misdemeanors and some felonies, it keeps this broken system in place for many others. We urge City Council to do everything in its power to ensure that come January 1, 2020, the legislation is implemented so it has the greatest decarceral effect in New York City.

Starting next year, police officers will be mandated to issue appearance tickets for the vast majority of people accused of misdemeanors and non-violent felonies.[1] This change in policing

[1] https://nyassembly.gov/2019budget/budget/A2009c.pdf

will help keep thousands of New Yorkers out of detention pre-trial. However, the legislation includes a number of carve outs that could result in people being denied the protections of the new law and unnecessarily detained for up to a day, sometimes based on a police officer's subjective determination as to whom the exceptions apply.[2] For example, police are not required to issue an appearance ticket if they believe the accused person would benefit from medical or mental health care. The change in policing under the new law is intended to help keep thousands of New Yorkers out of unnecessary detention pre-trial. However, the intent of the law must be effectuated. We urge the Council to provide careful oversight and mandate that the NYPD keep track of and make public all instances when an officer does not issue an appearance ticket, including which exceptions are used as reasoning.

The legislation also mandates that any instrument used in release decisions or conditions of release should be empirically validated and free from discrimination or bias.[3] This is because it is well documented that bias is endemic to risk assessment tools. We know first hand that tools created to assess risk of "flight" or "dangerousness" in and of themselves do not guarantee that fewer presumptively innocent people will be jailed. Eighty percent of our clients are deemed intermediate or high risk of non-return by the Criminal Justice Agency (CJA), the agency that conducts risk assessments at arraignment in New York City. Yet, 95 percent of our clients make all their required court dates with no personal financial incentive to do so. This serves as an indictment of risk assessment tools to in and of themselves accurately predict outcomes. Acknowledging the pitfalls of risk assessment instruments and acknowledging that real reform means addressing the underlying structural inequalities that disproportionately impact communities of color, the City Council should work to ensure that the agencies charged with the tool's creation and use comply with State law to mitigate harm and racial discrimination. CJA is in the process of redoing its assessment tool, so it is important we ensure there is no charge-based differential when calculating risk scores. CJA must also have a transparent, community-centered process for evaluating and re-validating their assessment tool.

We appreciate the work the Council has done to facilitate the process of paying bail through the package of Bail Easement Laws passed in 2017. The new bail legislation requires judges to set three forms of bail including either unsecured or partially secured surety bond. It is imperative that the courts understand how to process payment of unsecured and partially secured bonds. We urge the Council to require the speedy facilitation and processing of unsecured and partially secured bail payment and ensure bail facilitators are present and knowledgeable about this third form of bail.

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[2] Ibid.
[3] Ibid.

We will continue to push for the full and complete elimination of money bail, robust due process protections, and the end to pretrial incarceration for all New Yorkers. Until then, we urge City Council to do everything in its power to ensure that the bail reform legislation is implemented so it vastly reduces the number of New Yorkers and their families who are subjected to the harms of pretrial detention and supervision.

Thank you for your consideration.

THE LEGAL AID SOCIETY

The New York City Council
JUSTICE SYSTEM COMMITTEE

Pretrial Justice Implementation Hearing
May 22, 2019

Written Testimony by: Marie Ndiaye and Elizabeth Bender, Decarceration Project &
John Schoeffel, Special Litigation Unit

Oral Testimony: Marie Ndiaye, Supervising Attorney, Decarceration Project

Expertise And Perspective of The Legal Aid Society

The Legal Aid Society, the nation's oldest and largest legal services and social justice organization and is an indispensable component of the legal, social and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of criminal, civil and juvenile rights matters, while also fighting for legal reform. The Society has performed this role in City, State and federal courts since 1876. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Society accomplishes this with a full-time staff of nearly 2,000, including more than 1,100 lawyers working with over 700 social workers, investigators, paralegals and support and administrative staff through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. The Legal Aid Society operates three major practices – Criminal, Civil and Juvenile Rights – and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program.

The Society's Criminal Practice is the citywide public defender in the City of New York. During the last year, our Criminal Practice represented over 200,000 low-income New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. In the context of this practice the Society represents people accused of crimes from their initial arrest through the post-conviction process.

The Society's Civil Practice provides comprehensive legal assistance in legal matters involving housing, foreclosure and homelessness; family law and domestic violence; income and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker problems; tax law; consumer law; education law; community development opportunities to help clients move out of poverty; prisoners' rights, and reentry and reintegration matters for clients returning to the community from correctional facilities.

The Legal Aid Society's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect,

juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4,000 who were arrested by the NYPD and charged in Family Court with juvenile delinquency. In addition to representing many thousands of children, youth, and adults each year in trial and appellate courts, The Legal Aid Society also pursues impact litigation and other law reform initiatives on behalf of our clients.

The breadth of The Legal Aid Society's representation places us in a unique position to address the issue before you today. Our perspective comes from our daily contact with people who can experience life altering consequences as a result of a criminal conviction.

Pretrial Reforms Implementation Testimony

The Legal Aid Society would like to thank the New York City Council and Councilman Rory Lancman for the opportunity to present testimony on the implementation of the recently passed pretrial justice reforms. For far too long New Yorkers have suffered under the weight of an unrelenting criminal legal system--a system that has destroyed Black and Brown lives and whole communities, has led to many wrongful convictions, and has long been skewed in favor of prosecutors. The scales of justice are so unbalanced that innocent New Yorkers plead guilty to felony crimes with upstate prison sentences as we saw in the recent case of indicted NYPD Detective Franco.[1] Put plainly, our unjust speedy trial, discovery, and bail laws create an environment where prosecutors can easily coerce guilty pleas and secure harsh sentences, ultimately leading to our current mass incarceration crisis.

On April 1, 2019, New York said "no more." After decades of advocacy from legal defense organizations and communities directly impacted by these unjust laws, Albany passed sweeping reforms to our bail, discovery and speedy trial laws. The legislation eliminates money bail for most misdemeanors and nonviolent felonies; provides pretrial supports and court notifications to help people return to court; requires prosecutors to disclose evidence earlier in a case, and before the accused enters into a plea agreement; and expands speedy trial rights. These reforms represent a critical first step in undoing New York's oppressive pretrial ecosystem and bringing balance to our criminal legal system.

[1] Sean Poccoli, *Detective's Lies Sent Three People to Prison, Prosecutors Charge,* The New York Times, Apr. 24, 2019 https://www.nytimes.com/2019/04/24/nyregion/nyc-detective-perjury-franco.html.

However, these laws will be only as good as their implementation. New Yorkers will not see the decarceral benefits of these reforms if government actors do not abide by their letter and spirit. That is why we respectfully ask the City Council to exercise its funding and rulemaking power over the District Attorneys' offices, the Police Department, the Department of Corrections and all of the legal system stakeholders to see to it that the will of the people is properly implemented by January 1, 2020--but preferably long before that. The surest way to guarantee a smooth transition from our old system to the new is to start implementing these reforms now. We do not have to wait--and New Yorkers should not have to wait-- until January to effectuate the discretionary aspects of the bill, such as providing early discovery, releasing the vast majority of accused New Yorkers on their own recognizance, and closely scrutinizing prosecutors' trial readiness claims.

Bail Reform

Early Implementation

We urge the City Council to support early implementation of many aspects of the bail statute, as well as discovery and speedy trial, discussed below. Effective implementation of the bail statute will drastically reduce the population of people in New York City jails saving lives and money. According to the Center for Court Innovation, conservative estimates suggest a 43% reduction in the number of people on Rikers Island due to the mandatory release provisions.[2] This figure does not include the number of people eligible for money bail who would be released or diverted to services by the court. The new bail legislation has several groundbreaking features, many of which can be implemented immediately.

The bill mandates police officers write summonses in lieu of arrest for many charges, with a list of enumerated exceptions; mandates release or release with conditions after arraignment for nearly all misdemeanors and most nonviolent felonies; mandates that any restriction on liberty be the least restrictive condition necessary to ensure the accused's return to court; restricts the use of monetary bail to most violent felonies and a few misdemeanors and nonviolent felonies; requires judges to set three forms of bail, one of which is a partially secured or unsecured bond, when setting money bail; instructs judges to consider the person's ability to pay bail without posing an undue hardship; requires the court or a pretrial services agency to notify people of all court appearances; and provides a 48 hour grace period before the issuance

[2] See Center for Court Innovation, *New York's Bail Reform Law: Major Components and Implications*, Apr. 5, 2019, *available at* https://www.courtinnovation.org/publications/bail-reform-NYS.

of a bench warrant so that the accused can be notified. All of these provisions may be implemented immediately through the discretion of prosecutors, judges and the police department. The police can divert people away for the custodial arraignment process by issuing summonses or Desk Appearance Tickets. Prosecutors can stop asking for bail, and judges can stop setting bail, on people who will not be eligible for detention come January. In cases where the court wishes to set bail, they should be setting partially secured and unsecured bonds and considering the person's ability to pay that bail, as is already required by our state and federal constitutions.

As for the process by which partially and unsecured bonds are set and paid, there is much work to be done. Much of that work falls on the Office of Court Administration to train judges and court clerks on how to administer these forms of bail. Our current experience with partially and unsecured bonds do not bode well for what is to come in January when the court must set these forms of bail. Partially secured and unsecured bonds are and have been in our bail statute for forty years, and have been more widely used recently because of the advocacy of defenders. Despite this increase in use, most judges still do not set these forms of bail, and some court clerks are still unfamiliar with how to administer them. When family members of the Society's clients attempt to pay partially secured bonds in Supreme Court cases, they are frequently met with administrative barriers. Recently, in the Bronx, it took a client's family five days to post a partially secured bond because the court clerk did not know how to accept payment and insisted the family meet many conditions that are not required by law. Last summer, a client was not permitted to post partially secured bond because he did not have government issued ID. The law only requires that a person swear under oath to the truth of their name, address, place of work, and income--not that they present identification. This places barriers on low income and immigrant families who are less likely to have government issued ID. Despite intervention from the Mayor's office, the Bronx Supreme Court clerks continue to refuse to accept partially secured bond if an accused person is not physically in the courthouse. Additionally, the window to pay bail in Supreme Court is only open from 9am-12:45pm and 2-4pm -- a total of five hours and 45 minutes per day, creating undue burden on working class people who need to pay bail, or denying them that right all together.

If clients and their families face needless obstacles from court staff when they try to post partially secured bonds now, how will the court system accommodate the influx of these bail forms come January, when they will be mandatory? Courts usually can efficiently process cash bail and commercial bail bond payments without defense counsel's intervention. But because of the many stumbling blocks that come up when families try to post legally sufficient partially

secured bonds, defense attorneys often bear the responsibility of making sure courts accept them. However, that responsibility should lie with courts and their staff, especially as these bonds become more commonplace. Of City Council we can only ask that you encourage the Office of Court Administration to re-train all court staff in administering these form of bail to make the process as easy as paying cash bail or a commercial bail bond, and, in the interim, perhaps the City Council to can support staffing additional bail facilitators who can assist families posting these forms of bail.

With the effective implementation of the bail legislation we can see drastic reductions in the number of people in jail, and there is no legitimate reason we shouldn't be pursuing this immediately.

Similarly, prosecutors and judges can effectuate provisions of the discovery and speedy trial bills today. The new discovery bill requires prosecutors to disclose almost all evidence within 15 days of arraignment. There is nothing stopping the four District Attorneys' offices from following in the footsteps of their Brooklyn counterpart which has had open file discovery for decades. Pre-plea discovery should also be implemented to alleviate some of the coercive plea bargaining faced by thousands of New Yorkers. Other discovery implementation issues are below in the discovery section. Many of the speedy trial changes require the law to go into effect before they are fully implemented. However, one provision requiring judges to inquire into the prosecutors' claims that they are ready for trial can be implemented immediately to reduce prosecutorial gamesmanship and case processing times saving people months, if not years, of coming back and forth to court.

Pretrial Service Agencies

The new bail legislation also contemplates a robust system of pretrial services agencies (PSAs) to serve many roles in the pretrial system from providing court notifications to administering conditions of release. The latter is where we anticipate the City Council can be most influential. New York City, luckily, already has a robust array of pretrial services including programs like CASES and CIRT run by non-profits, and the City's pretrial Supervised Release program run by the Mayor's Office of Criminal Justice (MOCJ). However, with an anticipated 90% of accused New Yorkers being eligible only for release or release with conditions, pretrial supports will have to be expanded. We know that the vast majority of people accused of crimes who are released on their own recognizance return to court. We also know that lack of appearance in court is often caused by the lack of socio-economic supports, such as child care or

transportation, or having tenuous job security, rather than a desire to flee prosecution. These supports are necessary because many accused people wait hours, even all day, for a court appearance that often lasts just minutes. Yet, NYC does not currently provide the kind of "little" supports like court reminders, transportation assistance, and other less intensive pretrial services which make it easier for everyday New Yorkers to come to court, and which protect the presumption of innocence.

That is why we are asking for a fundamental change to the City's pretrial release options to make it easier for New Yorkers to appear in court without subjecting them to unnecessary supervision and surveillance. The City should develop a comprehensive, client-centered approach to pretrial services. It must also restructure its Supervised Release program and the agency that administers it to ensure that it continues to have a decarceral impact.

Supervised Release started in 2016 as an alternative to pretrial detention that diverted people charged with most misdemeanors and non-violent felonies (excluding intimate partner violence) away from Rikers Island. Since its inception, enrollment in the program has grown by 54% citywide. The majority (60%) of people enrolled faced felony charges. But come January, the vast majority of people who are eligible for Supervised Release under its current charge-based rubric will be subject to mandatory release or release with conditions--obviating the need for an alternative to detention. In order for the program to remain relevant and effective, it must be an alternative to detention for people charged with all cases, including violent felony offenses and other charges that will be subject to money bail--a change the program could, and should, implement immediately. There is no legal impediment preventing the Mayor's Office of Criminal Justice and all of the organizations that contract with the City to provide criminal justice services from providing comprehensive, client-centered pretrial supports to people regardless of the charges pending against them. The City Council should provide whatever support is needed to ensure that everyone benefits from the constitutional right to the presumption of innocence.

Electronic Monitoring

The new bail legislation also sets parameters on use of electronic monitoring (EM) of a person's location as a condition of release. In theory, EM has always been an option to the court, although in practice, it was not used because of the costs associated with the device, limiting its utility for the vast majority of people impacted by the criminal legal system. Although the legislator has removed this hurdle by prohibiting courts from passing on the cost

of conditions of release to the accused, that does not mean the City should widely adopt the use of EM. The state legislature understood the harms of EM and viewed it as a form of incarceration, which is why they applied Criminal Procedure Laws 170.70 and 180.80 to its use.[3] We implore the Council to be vigilant against replacing mass incarceration on Rikers with e-carceration in communities.[4] The use of EM, and therefore funding for it, must be strictly limited.

DOC Budgeting

The Society believes, as do many advocates, defenders, and people impacted by the criminal punishment system, that decarceration is a moral imperative. The mass incarceration before and after trial of Black and Brown New Yorkers is a humanitarian crisis that demands a humanitarian response. But to some, the more persuasive argument for jailing fewer people is that it will save our City money. To the extent these reforms do that, it will not be by accident. If this Council expects bail reform to reduce the burden on taxpayers it must make conscious budget decisions that divert money traditionally spent on jailing people into building meaningful pretrial supports, adequately staffing defender offices, and, most important, investing it directly back into the communities that mass incarceration has hurt the most. It now costs $300,000 per year to incarcerate a person in our City's jails.[5] But many of those dollars go to fixed overhead costs that will be spent whether that person is jailed or not. Simply decreasing the daily jail population will not automatically make our jail system less expensive. In 2018 New York's jail population was at a 37-year low of less than 9,000 people.[6] Yet its spending was at an all-time high of nearly $1.4 billion, partly because the Department now employs more people than it ever has. Each year it enrolls ever-bigger officer classes even as the jail population declines steadily. The City receives a bitter return on that investment: as the number of detained people went down, violence skyrocketed.[7] Use of force incidents are up 18%. Council needs to thoughtfully and critically analyze the Department's budget and ensure that our City's financial

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[3] Criminal Procedure Law § § 170.70 and 180.80 require the release of an incarcerated defendant if the prosecutor has not corroborated a misdemeanor complaint or indicted a felony complaint within a certain period of time.

[4] See Michelle Alexander, Opinion, *The Newest Jim Crow,* The New York Times, Nov. 8, 2018 https://www.nytimes.com/2018/11/08/opinion/sunday/criminal-justice-reforms-race-technology.html.

[5] N.Y.C. Comptroller Scott Stringer, *Despite a Decline in Incarceration, Correction Spending, Violence, and Use of Force Continued to Rise in FY18,* Jan. 22, 2019, *available at* https://comptroller.nyc.gov/newsroom/comptroller-stringer-despite-a-decline-in-incarceration-correction-spending-violence-and-use-of-force-continued-to-rise-in-fy-2018/.

[6] *Id.*

[7] *Id.*

investments are geared towards decarceration and racial justice, not the continuation of the mass incarceration and jail violence that these laws seek to decrease.

Discovery Reform

"Open File" Discovery – Criminal Procedure Law 245

Discovery is the process by which the law requires the parties in court cases to disclose their evidence to each other prior to a trial. Currently New York is one of the four states with the most restrictive discovery rules in criminal cases – alongside Louisiana, South Carolina, and Wyoming. But last month, the Legislature enacted a new law that will require "open file" discovery from the District Attorney early in the case. This new law is Criminal Procedure Law article 245.

Other states, including North Carolina (2004) and Texas (2014), have implemented comparable "open file" discovery statutes in recent decades. Their experiences prove that these rules are fully workable, far more fair, and can be adopted successfully. For example, a 2016 study examined prosecutors' attitudes toward open file discovery in North Carolina, which since 2004 has been the state with the broadest discovery rules in the country. It found that 90% of North Carolina prosecutors approved of the system, citing increased efficiency, protection against inadvertent non-disclosure of exculpatory evidence, facilitating guilty pleas, and fairness and trust. It also found that "prosecutors in North Carolina tend not to see witness safety as a significant problem with open-file discovery," and that there is "little evidence that open-file discovery endangers the safety of witnesses, a common argument against the practice." *See* Jenia I. Turner and Allison D. Redlich, "Two Models Of Pre-Plea Discovery In Criminal Cases: An Empirical Comparison," 73 Wash. & Lee L. Rev. 285 (Winter 2016). Likewise, prominent Texas District Attorneys and judges wrote memos of support for New York's discovery reforms in 2019, attesting that the rules can be successfully implemented and will benefit all parties in the criminal justice system.

But these are monumental reforms. Switching to a system of early and open discovery will require significant changes by New York's prosecutors, police and court system. In particular, we wish to highlight three measures that should be implemented for the Council's consideration:

Improved Electronic Information-Sharing Systems

Perhaps the most important part of successful transition to open file discovery laws will be the adoption of new and improved electronic information-sharing technologies to facilitate transmission of materials and information from Police Departments to District Attorneys' Offices, and finally to defense counsel.

The Council should examine how it can assist the City's five District Attorneys and the New York City Police Department in creating and implementing an online discovery portal – with a case index, sequential document numbering, more standardized police forms, and so on – as has been done in parts of Texas such as Dallas. Such online portals allow prosecutors to access materials directly from the police department, and they also allow registered defense lawyers to log onto the system and obtain available discoverable materials in the case in an efficient way. They are used in many other areas of the country as well, including Colorado and elsewhere. District Attorneys, police officials, and court and city administrators should survey the alternative technologies being used in other jurisdictions and invest in the optimal new system.

Notably, the Legislature recognized the central importance of information-sharing between police and prosecutors in the new discovery statute. Two specific provisions address this matter, and they make clear that police departments must open their complete files to prosecutors for compliance with the new rules. First, CPL § 245.55(2) states that (with certain exceptions), ". . . upon request by the prosecution, each New York state and local law enforcement agency shall make available to the prosecution a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant for compliance with this article. . . ." Second, CPL § 245.55(1) provides: "The district attorney and the assistant responsible for the case . . . shall endeavor to ensure that a flow of information is maintained between the police and other investigative personnel and his or her office sufficient to place within his or her possession or control all material and information pertinent to the defendant and the offense or offenses charged. . . ."

In addition, seamless information sharing between the parties (prosecutors and defense counsel) is of equal importance. The Council must ensure that any resources provided to the DA's offices and police departments to procure and maintain said system are also provided to the City's public defender offices. None of these reforms can be effectively implemented if the

public defender offices are not properly funded for technology and staffing capacity to receive, review and store discovery.

We believe that implementation of improved electronic information-sharing technologies will be the single most important step for the successful transition to "open file" discovery. It should be an immediate priority of all parties.

Training of Police Officers on Discovery

Another key step towards successful implementation of open file discovery will be training police officers on the need for timely disclosure of all materials to the District Attorney. Steps should be taken to develop and begin trainings as soon as possible. Practitioners in other "open file" discovery states have warned that officers' unfamiliarity with discovery law is a persistent problem that leads to frequent non-compliance and failures to make materials available to prosecutors early in the case. Police officials must be sure to prevent these misunderstandings in New York. *See also NYPD Patrol Guide*, Procedure 211-18 (stating that it is "imperative" that the prosecution be given "all" reports, notes, memoranda, test results, or any forms prepared by police officers in connection with the facts and circumstances of a case, "no matter how insignificant the member feels the notes or memoranda might be").

Efficient Court Procedures for Protective Order Applications

Under the new discovery statute, CPL Article 245, prosecutors and defense lawyers will make far more applications to courts for "protective orders" to withhold or delay disclosure of certain kinds of sensitive information from discovery materials [*see* CPL §§ 245.70, 245.10(1), 245.20(5)]. The court has three business days to conduct a hearing on a protective order application and should rule expeditiously [*see* CPL § 245.70(3)]. In addition, either party can obtain expedited review by a single appellate justice of a ruling that grants or denies a protective order relating to the name, contact information or statements of a person [*see* CPL § 245.70(5)].

It is extremely important that the parties receive prompt rulings from judges, so that they will be encouraged to fully and timely comply with the other mandates of the statute and will not be deterred from seeking rulings or making disclosures by persistent need to wait around all day to get a ruling from a busy judge. The courts should establish workable procedures and mechanisms for court decision-making and reviews. One option to consider is that certain judges should be assigned on a rotating basis to handle the applications for all cases

in the courthouse (at least for cases not yet assigned to an individual trial part), as occurs in New York City for Supervising Grand Jury Judges.

In sum, all states comparable to New York have long used broad and early discovery. No state that has enacted more open discovery rules has later gone back to impose restrictive ones. These are well-tested, mainstream reforms that work. Open file discovery rules extremely similar to CPL article 245 were successfully implemented in Texas and North Carolina in recent decades – and we can do it in New York as well.

Conclusion

On behalf of our approximately 300,000 clients, the Society thanks you for the opportunity to provide testimony on the implementation of recently enacted pretrial reforms. New York City has long been a leader in implementing changes to improve our criminal legal system. Those improvements are evidenced by the historically low number of people held on Rikers Island, especially on misdemeanors, and the fact that we have already closed one of its jails. We have an opportunity to continue to lead – to show the rest of the state, and nation, how to effectively implement criminal justice reforms to have maximum decarceral impact. One way NYC and the Council can show leadership is by implementing many of these reforms immediately. With the Council's guidance and input from defender organizations and directly impacted individuals, NYC can implement the bail, discovery and speedy trial reforms in a way that honors the letter and spirit of these laws – to lessen the tyrannical grip of the criminal punishment system and ultimately shutter Rikers Island.

BROOKLYN DEFENDER SERVICES

TESTIMONY OF:

Yung-Mi Lee – Supervising Trial Attorney
Criminal Defense Practice
BROOKLYN DEFENDER SERVICES

Presented before
The New York City Council
Committee on the Justice System
Oversight Hearing on Preparing for the Implementation of Bail, Speedy Trial, and Discovery Reform
May 1, 2019

My name is Yung-Mi Lee. I am a Supervising Trial Attorney in the Criminal Defense Practice at Brooklyn Defender Services (BDS) provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support. We represent approximately 25,000 people each year who are arrested in Brooklyn and whose cases will be greatly affected by the criminal justice reforms due to become effective on January 1, 2020. I thank the New York City Council Committee on the Justice System and, in particular, Chair Lancman, for holding this oversight hearing on preparations for the implementation of bail, speedy trial, and discovery reform.

BDS commends the New York State Assembly, Senate and Governor for the transformative criminal justice reforms included in the budget. These reforms go a long way towards correcting the unfair pre-trial justice system that currently exists, in which people languish in jail because they cannot afford bail, awaiting trial or considering a plea offer without access to police reports, witness statements, and other basic information needed to defend themselves. I also want to recognize the tremendous work of countless public defenders, private attorneys, bar associations, advocates, and people impacted by the criminal justice system and their families, all of whom organized and advocated across the state for several years to make these reforms a reality.

Lisa Schreibersdorf
Executive Director

177 Livingston Street, 7th Floor
Brooklyn New York 11201

T (718) 254-0700
F (718) 254-0897

www.bds.org
@BklynDefender

With these amendments to the bail, discovery, and speedy trial laws, many more people who are arrested will be guaranteed release rather than incarceration and will have all the evidence and information related to their case. An important provision in these reforms requires police to issue appearance tickets as opposed to immediately incarcerating people charged with low-level offenses. Now, many more of our clients will never set foot in a jail cell, a vast departure from today's reality. Given the devastating impact that even 24 hours in jail can have on a person, particularly a young person or a person with a health condition, this change exemplifies the profound improvements to justice in New York. All that said, the efficacy of these reforms will depend on implementation and, for that reason, I am grateful to the Council for shedding light on this process.

Implementing Bail Reform

It is no secret that thousands of New Yorkers suffer the brutality of Rikers Island every year simply because they are poor and cannot afford bail. This includes people with serious mental illness, people who are medically fragile, young people, elderly, people with disabilities, pregnant women and many more people who have specific needs that cannot be met in a jail. One of the starkest realities is that the vast majority of people on Rikers are Black or Latinx. This is largely due to the fact that those arrested in New York City are primarily of people of color. Because so many people who are arrested are also very poor, low bail amounts notoriously impact people of color. It is no surprise that 89% of the people held on $1,000 or less fall within this category. Pre-trial detention is an insidious and incredibly harmful practice which destroys people instantly through job loss, loss of stable housing, mental and physical health deterioration. This happens before a person has been convicted of any crime and these devastating outcomes survive even when the person is never convicted, which happens a very high percentage of the time.

Bail is also a way in which people are coerced into accepting a plea deal because they want to get out of jail or at least have a certain ending to the horrible nightmare of Rikers Island. In some cases the coercion is a collateral impact of not being able to afford bail. But in many cases, bail is intentionally used by prosecutors and judges to create pressure on people to plead guilty and keep the wheels of the criminal justice system moving. It is with great relief and hope that we view these reforms because we know, better than anyone save those who have personally suffered, what the horrible costs of this system have been.

The bail reform legislation included in this year's New York State budget will go a long way towards overhauling a broken system of pre-trial incarceration. Courts would be prohibited from setting money bail or ordering a person remanded in the vast majority of criminal cases. Instead, the new law allows for an expansion of pre-trial services and requires certain supports to help ensure people can make their court appearances. If money bail is to be set, courts must impose a minimum of three forms, one of which must be partially secured or unsecured bond. Courts must also consider the ability to pay and undue hardship when money bail is set. The new legislation also mandates law enforcement to issue desk appearance tickets (DATs) in many misdemeanors and E felonies. This means that many people will never see the inside of a jail cell, a dramatic change from the current process.

Given that these individuals would be released on January 1, 2020, or never jailed in the first place, we support a quick transition where NYPD, prosecutors and courts should implement the bail reform statute immediately.

We also urge the Council to assure that pre-trial services are funded instantly so they can support these changes as soon as possible by giving judges the help they need to release most people immediately, especially those who will be guaranteed release in January. We also ask that the Council hold NYPD accountable to issuing appearance tickets in more cases, something they are statutorily allowed to do now but not mandated. The Council should monitor the City's overall adherence to the clear objectives of this legislation—first and foremost, decarceration—while also being vigilant about minimizing other forms of supervision, onerous conditions, and invasive surveillance. It is essential that New York City continue to reduce arrests as well as expand decriminalization and consider additional initiatives needed to end mass incarceration in New York State. In addition, we urge the Council to reinvest savings from reduced incarceration in supporting communities most harmed by the criminal legal system. While it is essential to ensure that services and programs are made available to people who have been arrested to avoid pre-trial incarceration, it is also important that the City offer meaningful services for people who reside in communities that have been targets of over-policing while also reducing the use of police and arrest to solve problems related to poverty and trauma.

Pretrial Jailing Hurts Families and Communities

Pretrial jailing imposes a wide range of devastating costs to New York's families and communities. These costs begin with the need to post bail or pay for someone's release from jail after their arrest. When they cannot afford bail, families have to pay to stay in contact with their loved ones for phone calls and transportation to visit. On top of these direct costs, families must replace lost income, child support, and other financial contributions when a wage-earner or caretaker is incarcerated. Finally, incarceration also takes a toll on family members' physical and mental health, education outcomes, and other measures of well-being.

Pretrial Jailing Hurts People

Jail conditions pose a serious, and too often deadly, threat to incarcerated people. The New York State Commission of Correction found that in six different deaths across five different New York county jails, there were "egregious lapses in medical care." More recently, people across the country watched in horror as the people incarcerated in Brooklyn's Metropolitan Detention Center banged on the walls to protest their lack of heat, electricity and basic medical care during the coldest days of the winter – a reality that is tragically common in local jails across the state. Perhaps the best known story of the trauma caused by pretrial jailing is that of Kalief Browder, who took his own life after three years as an innocent teenager on Rikers Island. Efforts to protect public safety must also address the acute and grave risks that incarceration pose to the safety and well-being of the thousands of New Yorkers locked inside.

Pretrial Jailing Distorts Justice

A summary of analyses included in a 2015 report by the VERA Institute of Justice found defendants detained before trial were far more likely to accept harsher plea deals and receive prison or jail sentences. Of all those who receive prison and jail sentences, those who were incarcerated pre-trial received sentences that were, on average, three times longer. The Bureau of Justice Assistance, a division of the U.S. Department of Justice, has found that "[t]hose who are taken into custody are more likely to accept a plea and are less likely to have their charges dropped."

Every day that goes by without implementing bail reform, hundreds of New Yorkers get sent to jail. Their lives are upended, they face serious physical abuse, lose jobs, housing and family connections, and they receive inadequate medical and psychiatric care. New York City and all court actors must build on the work of the Legislature and Governor by ending mass jailing.

Preventing Mass Surveillance

One concerning element of the new bail statute is the allowance for electronic monitoring (EM), or what some have called electronic shackling, as a form of pre-trial supervision. Importantly, people facing charges cannot be made to pay for EM under the new law, and the use of EM would be subject to the release protections of Criminal Procedure Law 180.80 and 170.70. Also, it would not be permitted in cases where the top charge is only a misdemeanor, with the exception of cases involving allegations of domestic violence and sex offense crimes. Still, there is a real risk that mass surveillance, coupled with restrictive and ultimately punitive conditions, replaces mass jailing, with the same racial and economic disparities. EM raises privacy concerns because it can be used to track an individual's movements which have nothing to do with its intended use, namely, as a way to ensure court attendance. It also provides a way for law enforcement and possibly private corporations to collect and store data for years – well beyond the life of a criminal case. Finally, given the risk of malfunctions as well as subjective determinations as to what constitutes a violation, re-incarceration can occur instantaneously and broadly. While defendants cannot be charged for EM, each and every case in which it is ordered will cost taxpayers. Private corporations that feed on the criminal legal system will profit. Use of EM should be limited to a very narrow set of cases in which a person would otherwise be in jail, or else it will undermine the promise of reform.

Implementing Discovery Reform

The criminal discovery reform legislation included in this year's New York State budget generally requires all evidence and information in a criminal case to be turned over within 15 days of arraignment and on an ongoing basis and mandates that prosecutors make these disclosures prior to the expiration of any plea offer. Early and complete disclosure promotes fairness in the criminal justice system. Prosecutors and law enforcement will no longer have to decide whether any information constitutes Brady or exculpatory evidence. Instead, they will have to be comprehensive in turning over such information regardless of whether they believe such information is relevant. As such, the law does not limit discovery to any specified list of discoverable items, though one is included in the law to help ensure compliance. A party can

request and a court can order disclosure even if it is not specified within the law. The reform also allows for the defense to adequately investigate a case so that even if items are not within the control or possession of the prosecutor, the defense can still move to preserve evidence or a crime scene and the defense can subpoena any additional items.

The importance of discovery is highlighted by special provisions requiring sanctions and remedies for non-compliance. These remedies or sanctions include adjournments, reopened hearings, adverse inferences, excluded or precluded evidence, mistrials, or dismissal, depending on the possible impact of the discovery violation. Without a certification of compliance (that discovery is complete), the prosecutor will not be able to announce ready for trial, under New York's speedy trial statute, CPL §30.30.

Prosecutors throughout the state and most parts of the city have withheld discovery claiming public safety or witness safety concerns. While witness safety concerns are valid in a very small subset of cases, the new law allows prosecutors to move for protective orders as needed. The importance of discovery is manifested by the statute's requirement that courts balance the need for disclosure with any legitimate need to protect witnesses or evidence and so the new legislation allows for limited redactions by allowing disclosure only to a the defense attorney and agents but no one else.

In Brooklyn, unlike most of the rest of the state, the Kings County District Attorney's has a longstanding policy to provide discovery to the defense on an ongoing basis in most cases, thus debunking the myth that most cases raise witness safety or intimidation concerns. This policy has improved outcomes and streamlined cases.

However, because District Attorneys have not been statutorily required to turn over all discovery in a timely manner, the decision as to whether or not discovery should be withheld is within their control as opposed to a neutral arbiter, a judge. The first day of a criminal prosecution can derail a person's life, and that is why discovery at the earliest possible moment is critical. The new legislation directs prosecutors to turn over all evidence as soon as is practicable, but *no later than* 15 days after arraignment. In other words, we hope that prosecutors will be able turn over many documents and reports in their file at the first appearance, also known as criminal court arraignments, including police reports, complaint room screening sheets (also known as Early Case Assessment Bureau reports), photographs, video recordings and witness and complainant statements.

The statute also recognizes that people should make decisions about guilty pleas not only voluntarily, but also knowingly. That means that, at least seven days prior to the expiration of a plea offer, prosecutors must turn over, in addition to the aforementioned items, any written or record defendants' statements, grand jury testimony, names and contact information for law enforcement personnel involved in the case, names and contact information for witnesses, expert opinion and scientific reports and evidence, electronic recordings, exculpatory evidence, evidence that tends to negate guilt, evidence that reduces the seriousness of the charged crime or might reduce a sentence, summaries of all promises or inducements offered to people who may be called as witnesses, and more. I cannot overstate the importance of having early access to these items to review them with our clients and advise them on plea offers that may

fundamentally impact them for the rest of their lives, whether due to a period of incarceration, a permanent criminal record, or more.

Many of these items will require the NYPD to provide evidence to prosecutors that, under the existing discovery regime, would often never actually be made available to the defense. Prosecutors will now be required to make efforts to communicate with NYPD to preserve and obtain documents and physical evidence. There is a due diligence requirement built into the statute. This free flow of information between the prosecutor and law enforcement is essential for discovery reform and compliance. The City Council must ensure that NYPD is compliant and assists the prosecution with this process.

Implementing Speedy Trial Reform

The speedy trial amendments seek to strengthen a defendant's right to a speedy trial. Far too many cases languish and congest court calendars even though they will never go to trial. Thus, even Vehicle and Traffic infractions are subject to speedy trial dismissals. Courts will also be required to evaluate any statements of readiness to determine actual readiness. The amendments go even further in seeking to curb the practice of illusory statements of readiness:any statement of unreadiness in court which follow an off calendar statement of readiness will also require courts to determine whether the unreadiness was the result of exceptional circumstance. Only upon a finding of an exceptional circumstance can the court exclude time from the speedy trial calculation.

The amendments also allow appellate courts to review any adverse decisions – even after a guilty plea. Thus, a defendant who feels that he or she was wrongly denied his or her right to a speedy trial can seek further review.

Further, as with discovery reform, the speedy trial amendments ensure that a prosecutor cannot announce ready unless full compliance with discovery has occurred. This amendment serves to incentivize prosecutors to turn over discovery as soon as possible so that cases do not languish.

Tracking and Reporting Data

One area in which the Council could be helpful in implementation of pre-trial reforms is ensuring uniform and comprehensive public reporting on the use of appearance tickets versus arrests; bail setting, including the amount and form; and pre-trial conditions of release, including electronic monitoring.

Thank you for your consideration of our comments. If you have any questions, please contact Jared Chausow in my office at jchausow@bds.org or (718) 254-0700 Ext. 382.

OFFICE OF THE RICHMOND COUNTY DISTRICT ATTORNEY

OVERSIGHT - PREPARING FOR THE IMPLEMENTATION OF BAIL, SPEEDY TRIAL, AND DISCOVERY REFORM

THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE ON THE JUSTICE SYSTEM

MAY 22, 2019

MICHAEL E. MCMAHON

DISTRICT ATTORNEY

OVERVIEW

Good afternoon. It is an honor and pleasure to appear before the City Council today. I want to thank the Chair of the Committee on the Justice System, Rory Lancman, for his time and hard work in presiding over today's Hearing. I also want to acknowledge and thank Speaker Corey Johnson for his leadership of the Council. I look forward to continuing our work to improve the criminal justice system in line with our shared goal of better protecting and serving the people of the City of New York.

I also want to thank of course Staten Island's Council delegation: Minority Leader Steve Matteo, Councilwoman Debi Rose, and Council Member Joe Borelli for their ongoing advocacy on behalf of the people of Staten Island and their continued support of the Richmond County District Attorney's Office (RCDA).

It is no secret that I have serious concerns about the impacts, both intended and unintended, that the recently passed package of reforms to our state's criminal justice system will have on the people of Staten Island and New York City. While I believe that the legislators who championed these reforms, along with Governor Cuomo, were doing what they believed to be right, it is abundantly clear that Albany's fundamentally flawed legislative and budget process, combined with the poisonous impacts of our hyper-partisan politics, and a race to claim the crown of most progressive social justice reformer, has left us with a package of legislation that will make every New Yorker less safe. To be sure, it will be the victims of crime, the men and women of the law enforcement community, and the innocent people of New York left suffering the consequences of these irresponsible and soft-on-crime policies.

In anticipating the coming impacts of bail reform, I would first like to remind my colleagues and this Committee that the primary purpose of setting bail is to ensure a defendant returns to court. We do not ask for bail often, and when we do, it is primarily based upon the likelihood that a defendant will not appear, and ***never*** as a punitive measure for those who cannot afford to pay.

The impacts of bail reform will be felt across the system, but perhaps most acutely in major narcotics cases. Since non-violent felonies are excluded from eligibility of a bail request, I defer to my colleague Special Narcotics Prosecutor Bridget Brennan who, in her editorial published last month noted: "Beginning on Jan. 1, 2020, a judge will only be able to require bail for drug defendants only on the specific charge "Operating as a Major Trafficker," an A-1 felony carrying a potential life sentence." SNP Brennan notes she has charged ***fewer than two dozen defendants with this offense over the past five years***. When you compare that figure to other A-1 level felony drug charges, which SNP Brennan notes she has charged over 1,000 times in that same span, it is a jarring thought that these individuals, who stand accused of callously profiting off the death and illness of our fellow New Yorkers, would be released and ineligible to be held on bail while their case proceeds. To be sure, many of these defendants will surely leave the City while many who are currently being held will apply for, and be granted their release.

If the intended goal of this reform was to prevent people from being held on bail simply because of an inability to pay, a goal that I fully support, legislators in Albany missed the mark by a wide margin, leaving an end result that will negatively impact the safety and security of all New Yorkers.

With respect to discovery reform, this is where the most serious lack of compassion for victims of crime was shown by the legislature and Governor. Some of the most troubling provisions include that every witness to a crime and every victim of a crime will now have their name and contact information disclosed to the defense, and can also be interviewed by the defense. Additionally, the defense may now move for a court order to access a crime scene or other premises, including a victim or witnesses' home.

It is hard to imagine a victim of a crime willing to move forward with the prosecution of a criminal case while at the same time being forced to comply with these dangerous measures. Not only do these provisions threaten the safety of victims and witnesses, significantly more time, resources, and, most importantly, funding will be required to ensure their safety throughout the criminal justice process – something Albany did not commit to our offices. That leaves it to the City Council and our own ingenuity to determine how to best comply with our obligations under the new law, a situation that will leave us scrambling and not able to serve the people we represent to the best of our ability.

With respect to speedy trial reform, we recognize and share the legislature's goal of unburdening the system and moving cases more expeditiously through the criminal justice system. However, without the proper funding allocated to our offices and the Office of Court Administration to properly implement these changes, ensuring defendants are prescribed appropriate sentences and offering diversion from the criminal justice system when appropriate, this significant influx of defendants being given Desk Appearance Tickets (DATs), and the expedited timeline with which all cases will be mandated to move, will strain our resources to their limit.

I would be remiss if I failed to mention the proposed "elder parole" bill, which, as you know would grant parole eligibility to all inmates ages 55 and up who have been in prison at least 15 years. In a recent Staten Island case, defendant Michael Sykes was sentenced to two consecutive terms of life in prison without parole for murdering his girlfriend and her two young children inside a hotel room. He also badly injured a third child, who miraculously survived his rampage. Now a healthy five-year-old girl, why should this child have to grow up living in fear that her mother's killer will one day walk free?

To be blunt, this proposal is a slap in the face to every family that has suffered the loss of a loved one to crime – they should not be made to relive that trauma on a recurring basis when a defendant facing a life sentence for murder is suddenly up for parole due to this ill-conceived legislation.

Again, while we fundamentally disagree with much of what was passed as part of these reforms to our criminal justice system, it appears this will be the law of the land

when the calendar turns to 2020. We implore the Council to consider our requests, outlined later on in this testimony, for increased staffing, programmatic funding, and infrastructure needs so we can continue to carry out our duties and, in partnership with the NYPD, continue to further drive down crime. Make no mistake about it – these asks are necessary and critical to implement these mandated reforms, and action must be taken urgently to make sure the resources are in place and ready to go on January 1, 2020. Without these needs being addressed, victims of crime and their loved ones, public safety, and the incredible gains we have made in keeping crime at its' lowest levels in decades, will be at serious risk.

LOOKING TO THE FUTURE AND REMAINING NEEDS AND CHALLENGES

We recognize the significant challenges facing the City as agencies throughout our government are facing cuts to their budgets, however given the package of reforms that we are mandated to implement as of January 1, 2020, these needs are urgent and not optional for our agency to adequately fulfill our obligation to the people of Richmond County under the laws of the State of New York.

I must emphasize two points here:

First, these requests are just a preliminary estimate with our initial thoughts on what will be required to restructure our office to address these new system changes. Over the next few months, there will be working groups and many meetings to full flesh out how we will operationally adjust to these reforms. We fully expect these estimates to only increase as we continue in this process and delve further into operational needs. As such, we will work diligently with this Council, the Mayor's Office of Criminal Justice, and the Office of Management and Budget to keep you regularly informed about additional needs.

Second, this funding is needed well in advance of January 1, 2020 because hiring and training takes time – it doesn't happen instantaneously. New systems must be up and running and functioning on January 1, 2020, so we do not have the luxury to wait on these requests. As a result, I must respectfully ask and implore you to understand that these funding requests need to be considered urgently, in the adopted FY2020 budget. It cannot wait.

Total Needs Requested for FY20

Total PS Funding Requested: $2,499,000

Total OTPS Funding Requested: $928,600(+)

- **New Needs Outlined in Preliminary Budget Testimony**
  - **Total PS Funding Requested: $604,000**
  - **Total OTPS Funding Requested: $8,000**
- **Additional New Needs Based on Criminal Justice Reforms**
  - **Total PS Funding Requested: $1,895,000**
  - **Total OTPS Funding Requested: 920,600**
  - **Total Capital Funding Requested: TBD**

Needs Outlined in Preliminary Budget Testimony

1. Baseline Conviction Integrity Review Unit - $425,000 (PS)

Last year, the Richmond County District Attorney's Office (RCDA) was granted an historic first for our office when the City Council granted us funding for a Conviction Integrity Review Unit. We are particularly grateful for your leadership in helping us secure this funding. We recognize this prosecutorial best practice is important to ensure that justice was properly handed down for all defendants, and we were grateful that the Council provided the needed funding to accomplish this mission. When funded in FY19 however, the funding, which was for salaried positions, was not baselined.

Since receiving funding for the Unit last year, we were met with several setbacks from accessing this funding, but in good faith we nevertheless set about this important work. The experienced team we have dedicated to this Unit has already undertaken a tremendous amount of time and resources to reviewing the cases in question. In fact, we have cases under review right now where defendants who are incarcerated are awaiting our results. If this funding, is not baselined, we will have no choice but to stop this work, separate employees, and abandon these reviews, which require an enormous amount of time and dedicated attention, travel, and even OTPS resources. **Thus, we are asking for $425,000 for the Conviction Integrity Review Unit to be baselined in FY20 and moving forward.**

2. ADA Salary Parity – ADAs with 5+ Years of Experience - $179,000 (PS)

My office is facing an increasingly uphill challenge with the experiential level of our Assistant District Attorneys (ADAs) and our ability to offer competitive salaries in order to retain the best talent. The low pay of ADAs in our office combined with the high cost of living, high cost of student loan repayments, and desire to start a family means that we have significant brain drain for ADAs, most significantly after the 5 year mark. Although the Office of Management and Budget ("OMB") and the Mayor's Office of Criminal Justice ("MOCJ") took a first step in this last year's budget to address salary parity for ADAs with less than 5 years of experience – quite honestly, this step did nothing for Staten Island, as we had already internally addressed salary parity with that level of ADAs. Our problem remains with retaining ADAs with over 5 years of experience. In fact, it was almost as if we were punished compared to the other boroughs for proactively addressing our parity and recruitment struggles by reallocating and training younger staff to address our imminent needs. **In light of this, we are requesting $179,000 which will allow us to fully address this critical issue.**

3. Body Worn Camera Storage - $8,000 (OTPS)

Last year, we were grateful to have received funding to meet our personnel obligations for body worn camera analysis, however, like my colleagues, we also now need to address the associated costs with storage of this footage. **The OTPS cost for storage of the footage for my office is relatively modest, but as a result we are requesting between $6,000-$8,000 annually over the next five years.**

New Needs Necessary to Implement New Criminal Justice Reforms

Total PS Funding Requested: $1,895,000

Total OTPS Funding Requested: $920,600

Total Capital Funding Requested: TBD

Below please find our ***preliminary estimated needs*** based upon our initial reading of the criminal justice reform package recently signed into law in New York State:

Discovery Reform

Under the new discovery laws, RCDA will need to increase personnel and implement new technologies throughout the office to meet the requirements under the statute to turn over evidence in a much more expedited time frame, and also to ensure that the victims of crime and witnesses are protected throughout the criminal justice process.

1. **Personnel Needs to Implement Reform - Total $1,345,000 (PS)**
    - **Additional Grand Jury Personnel - $100,000 (PS)**
        - The cost for Grand Jury Personnel is going to increase because of the shortened timeline in which we have to turn over grand jury minutes. We estimate we will require **1 additional full time stenographer, and 1 additional part-time stenographer, at a cost of $100,000 annually.**

    - **Increased Paralegal Support in All Felony Bureaus and Criminal Court & Assistant District Attorneys in Criminal Court - $700,000 (PS)**
        - In order to more expeditiously review cases and collect, redact, and turn over discovery, we estimate we will require **3 additional paralegals for our Criminal Court Bureau ($160,000), 6 for the Legal Support Staff (1 for each felony Bureau, at a total of $330,000), and 3 Criminal Court ADAs ($210,000).**

    - **Increased Support Staff for Expedited Review of Body Worn Camera Footage - $115,000 (PS)**
        - In order to more expeditiously review and turn over body worn camera footage, we will require additional Body Worn Camera analyst support to be able to locate and redact video footage. We estimate we will need **at least 2 additional BWC analysts ($115,000).**

    - **Additional Detective Investigators (DIs) - $280,000 (PS)**
        - In order to ensure our ability to provide witnesses to the defense in a safe and productive manner, we will need additional DIs to locate and transport witnesses so defense counsel has appropriate and timely access to witnesses for video conferences and interviews. We

currently estimate that we will need **4 additional Detective Investigators. ($280,000).**

- **Additional Information Technology Support - $150,000 (PS)**
  - In order to manage electronic evidence, redaction needs, additional tech services, and new electronic discovery requirements, we estimate we will require **1 additional Systems Administrator and 1 additional Help Desk Technician ($150,000).**

2. **Information Technology (IT) Needs to Implement Reform - $568,080 (OTPS)** Given the influx of staff and increased demands on our Office, we also are requesting funding to provide:
   - 25 Additional Laptops **($62,500)**
   - Expanded Number of Subscriptions to Redaction Software (Adobe) **($65,000, ongoing)**
   - Computers, printers and desktop scanners for new staff **($87,500)**
   - 10 Surface Pro Tablets **($30,000)**
   - Cell phones for new staff **($15,000, plus annual cost)**
   - Additional lease for large copier **($10,080, plus annual cost)**
   - WebEx Technology for Video Conferences with Masking Capability to protect Witnesses **($33,000, annually)**
   - Expanded server storage for digital evidence **($250,000)**
   - Widespread use of portable storage for e-discovery **($15,000)**

*We are still testing our e-discovery capabilities and may require additional support to shift fully to e-discovery particularly given the size of some video and audio files.

3. **Other Needs to Implement Reform - $190,000 (OTPS)**
   - Professional Development and Training **(Cost TBD- approx. $28,000)**
   - Furniture for new staff **($62,000)**
   - Fringe Costs for new staff (supplies, water, coffee, cleaning, etc) **($100,000)**

4. **Capital Needs to Implement Reforms - TBD (Capital)**
   - Secure Rooms: We will need 2-3 secure spaces to facilitate witness video conferencing with defense.

<u>DAT and Bail Reform</u>

We anticipate that the reforms to New York State's bail system and Desk Appearance Ticket (DAT) protocol will dramatically increase the population of defendants eligible for our pre-arraignment diversion Heroin Overdose Prevention and Education (HOPE) program in addition to the number of defendants eligible for other diversion programs. This will require increased personnel and IT needs.

1. **Personnel Needs to Implement Reform - $300,000 (PS)**
   - **Additional Alternatives to Incarceration (ATI) Personnel ($300,000)**
     - In order to appropriately and effectively work with an increased population of defendants eligible for diversion, we will require **1**

Additional HOPE Coordinator; 1 Additional ATI ADA; 1 ATI Data Coordinator, and 1 Additional Paralegal.

2. **Information Technology Needs to Implement Reform - $57,760+ (OTPS)**
    - Computers, Printers and desktop scanners for new staff (**$14,000**)
    - 6 Surface Pro Tablets (**$18,000**)
    - Cellphones for new staff (**$2,400**)
    - Database for better data tracking and evaluation of Diversion participants and outcomes (**Cost TBD- approx. $20,000**)
    - Additional lease for large copier (**$3,360**)

3. **OTPS Needs to Implement Reform - $50,000 (OTPS)**
    - Furniture for staff (**$10,000**)
    - Professional Development and Training for Staff (**Cost TBD- approx. $24,000**)
    - Fringe Cost per additional staff member (**$16,000**)

Expansion of the Statute of Limitations for Crime of Rape in the 2nd Degree and Rape in the 3rd Degree

1. **Personnel Needs to Implement Reform - $250,000 (PS)**
    - We anticipate this change will lead to an influx of cases brought into our Office. We also anticipate many, if not most cases will be several years old, making the thorough investigation of these claims incredibly difficult and time-consuming. **Thus, this reform will necessitate the hiring of additional ADAs in our Special Victims Bureau with mid-level and/or senior- level experience, additional Victim Advocates, and Paralegals ($250,000)**

2. **Information Technology Needs to Implement Reform - $19,760 (OTPS)**
    - Computers and Printers and desktop scanners for new staff (**$14,000**)
    - Cellphones for new staff (**$2,400**)
    - Additional lease for large copier (**$3,360**)

3. **Other Needs to Implement Reform - $35,000+ (OTPS)**
    - Furniture for new staff (**$10,000**)
    - Professional Development and Training on new Law & trauma-informed training for working with victims of sexual assault (**Cost TBD- approx. $9,000**)
    - Fringe Cost per additional staff member (**$16,000**)

While we no doubt face a significant amount of challenges to our shared mission of keeping all New Yorkers safe and equitably serving justice on their behalf, I remain confident that through our continued collaboration and partnership we will be able to accomplish that goal. Thank you for your continued support of our office and all residents

of the City of New York. I look forward to continuing our work together to serve all residents of this city in the pursuit of providing equitable justice under the law.

Sincerely,

Michael E. McMahon
Richmond County District Attorney

Testimony before the New York City Council

Committee on Justice System

Committee Room, City Hall, New York

May 22, 2019

John M. Ryan
Acting District Attorney
Queens County District Attorney's Office

James C. Quinn
Senior Executive Assistant District Attorney
Queens County District Attorney's Office

May 22, 2019

Good afternoon. I appear today on behalf of our Office. I'd like to express our gratitude and the gratitude of the Brown family for the many kind words of condolences that we have received. Judge Brown was a great District Attorney and a great man. We will all miss his wisdom and I believe we will miss him more and more as time goes on.

I would like to thank Chairperson Lancman and the members of the committee for the opportunity to address you today on behalf of my office regarding the implementation of the bail and discovery legislation passed by the state legislature and scheduled to take effect on January 1, 2020.

First I would like to echo my colleagues' logistical concerns about implementing these changes. Our analysis of just body worn camera videos alone shows that in one week (April 1 - April 7, 2019) there were 553 arrests with body worn camera videos, with a total of 540 hours of video. That is an average of about an hour of BWC video on each arrest. These videos each have to be viewed prior to being turned over to ascertain whether any audio and/or video portions have to be redacted prior to being given to the defense. Once that determination is made, additional hours will be spent filing motions for protective orders to redact the materials to obscure victims' faces, voices and addresses. Once that motion is decided we have to spend additional hours actually reviewing and redacting the material.

The same procedure must also be followed for 911 tapes and radio runs, which in some cases can also run for hours.

These new discovery procedures will especially impact our office, as we dispose of approximately 70% of our felony cases pre-indictment, prior to the time current statutory discovery obligations come into play. It will require a massive "re-tooling" of our discovery procedures, requiring us to process all these materials on cases which would have, in the normal course of things, been disposed of pre-indictment.

We have, for many years, turned over early discovery on our misdemeanor Criminal Court cases. We already have a process available in Criminal Court where we send defense attorneys a link that is available for attorneys to view and download discovery materials for a two week period. After complaints from the management at the Legal Aid Society that two weeks was not enough time for their attorneys to open their emails, we extended it to a month, the maximum time that DOITT allows. Under the new statute, **we** are given 15 days to obtain, review and redact materials that they can't even **open** in two week's time. We will work it out but it is going to require a substantial allocation of resources and equipment that we are just beginning to appreciate. The Mayor's Office has been helpful in getting this conversation started, and we appreciate that.

We are still in the process of assessing what the budgetary impact of the legislation will be on our office, however, we anticipate both IT-related hardware and software expenses, as well as the need for additional staffing. On the IT side, we will likely need additional network storage to deal with the rapidly growing volume of digital evidence; additional personnel and high-speed scanners; enhanced computer workstations and high-capacity printers for select personnel; video redaction and other related software; and additional Internet bandwith to address the increased volume of material

that will be transmitted. We also anticipate the need for approximately four additional IT staff people including a system administrator, a help desk coordinator, an application developer and an analyst in order to implement these changes. We further anticipate the need for additional paralegals and other support staff throughout the office. It is not possible at this time to provide a precise number of how many paralegals and other support personnel but we would predict between 10 and 20 in addition to the IT staff referred to above. Our cost estimate is approximately $1,500,000.

But there are other issues with the new discovery statute that go beyond the cost in terms of dollars and create additional problems. The first is the contact information that we are required to give defense counsel for witnesses. We realize that protective orders are available, but how do you explain to a court that a witness in the Ravenswood Houses who viewed a gang shooting is afraid to have her name revealed to the defense? How do you put the reasons for that fear in a motion?

What about a homicide witness in an insular community like the Rockaways? How do we protect them once their identity becomes known even before the grand jury has met? Why would they come forward once they know the defendant will know who they are? They have lost the security of plausible deniability.

How do we tell a burglary complainant that the defendant may have the right to come into her house with an investigator to take pictures? Do we advise them of that before or after they sign the complaint? Do we provide them with an attorney to contest the defendant's motion, or advise them to hire one on their own? The law requires prosecutors to establish probable cause to obtain a search warrant to search a defendant's house. What is the standard to inspect the complainant's home? How could it possibly be less than that required to get into the **defendant's** home? The statute is conspicuously silent on that standard. When complainants ask us where the defendant is and we tell them that the defendant is free because the judge, by law, could not set bail, how cooperative do you think they will be?

When we tell witnesses that we have to provide contact information for them to the defendant's attorney, do we advise them that they have a "right to remain silent and refuse to answer questions"? If the victim is 16, do his parents have a right to refuse to allow their child to be questioned? Do any of these witnesses even have the right to tell us to refuse to provide contact information? Is there any limit on the number of times that a defense investigator can approach or call witnesses? Does no mean no?

How do we tell a random robbery victim attacked and robbed on a train by strangers that his grand jury testimony is no longer secret and that we will be turning it over to the defendant as soon as we type it up?

These are all very legitimate issues dealing with the implementation of these laws that are going to affect our very ability to prosecute these cases. We are not talking here about police reports, or calibration tests. We are talking about substantially disrupting the lives of some of our most vulnerable citizens. How do we protect the people in high crime areas from the criminals who prey upon them when, in almost every case, their identity will be known so quickly? What did these victims do to be treated with such indifference? Don't they have rights too? While they still have rights those rights have unquestionably been diminished.

The hardest part of any prosecutor's job is to convince victims that it is safe to come forward, that it is a sacrifice they must make for the betterment of their community, and that we will protect their identity until the last possible moment. That last possible moment could now be as soon as 15 days after arrest. It will have serious repercussions on our ability to prosecute crime in Queens County.

We will have to deal with these issues because it will be the law. Judge Brown taught us that we have to abide by the law even if we disagree with it .. and that is what we will do.

We choose not to be silent at this critical moment. However well-intentioned this legislation may have been in the eyes of the sponsors, it was not well thought out. We believe that there will be serious long term consequences to public safety and this may signal the end of the era when crime only goes down. We hope that we are wrong .. but fear that we are right.

Testimony

of

Bridget G. Brennan
Special Narcotics Prosecutor

Before

The New York City Council
Committee on the Justice System

Oversight -- Preparing for the Implementation of Bail, Speedy Trial, and Discovery Reform

May 22, 2019
Council Chambers
City Hall

OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR

Thank you for the opportunity to discuss the significant impact the recent legislative changes will have on the work of prosecutors in New York City. My testimony will focus on two primary areas of concern for the Office of the Special Narcotics Prosecutor (SNP). First, the new bail statute undermines our efforts to address the opioid epidemic through apprehension and detention of those who import and distribute large amounts of heroin, fentanyl and cocaine. It invites increased drug cartel activity to New York City, one of the nation's major narcotics hubs. Second, it imposes significant new responsibilities on us. To meet our expanded speedy trial and discovery obligations, we will require additional staff and other resources.

Popular support buoyed efforts to address concerns that our system was giving an unfair advantage to the rich and powerful, while jailing those with scant resources before a trial was ever held or a conviction obtained. However New Yorkers will be shocked and dismayed come January 1, 2020 when they wake up and discover that bail reform is not limited to low level non-violent offenders. State legislators have mandated the release of thousands of defendants charged with a multitude of serious crimes, including top narcotics crimes, with no possibility of a judge setting bail. The legislative process lacked transparency and the public has not yet begun to grasp the full scope of these laws. I appreciate the opportunity to discuss the new statutes and their implications at this hearing.

Bridget G. Brennan
Special Narcotics Prosecutor
for the City of New York

Bail and Pretrial Detention: Class A Narcotics Felonies

In narcotics cases, unless a defendant faces a single, seldom charged offense, the new law requires judges to treat cartel associates the same way as low level street dealers when it comes to bail. After January 1st, a judge must release all drug defendants except those facing prosecution under the charge titled Operating as a Major Trafficker, an A-I felony carrying a possible life sentence. This is true even in cases where many pounds of heroin and fentanyl, worth millions of dollars, are recovered. Meanwhile, drug overdoses are killing thousands of New Yorkers each year, far more than all violent crimes combined.

Those who stand to benefit from the bail statute include members of foreign cartels sent to oversee million-dollar narcotics transactions, operators of large scale drug packaging mills that churn out tens of thousands of doses of heroin and fentanyl, dealers who deliberately sell laced narcotics despite knowing customers may overdose and doctors who fuel addiction by illegally exchanging prescriptions for cash. Because New York City is a major hub of narcotics importation and distribution, surrounding states will also feel the impact of these reforms.

Over the past five years, SNP's investigations resulted in the seizure of nearly four tons of narcotics. Yet, the office charged fewer than two-dozen defendants under the Major Trafficker statute during that time. The majority of the most serious narcotics traffickers were charged with other A level felony charges, including A-I felonies that carry a maximum 20-year sentence and A-2 felonies that carry a maximum 10-year sentence. Once the bail changes take effect, defendants facing these latter categories of serious A level felony charges will walk out of court with no bail set.

Perhaps the legislature assumed law enforcement could charge all drug kingpins under the Major Trafficker statute. We cannot, nor would we want to. Not all cases are appropriate for a charge that carries a life sentence. Fast moving investigations afford us little time to develop the evidence necessary to satisfy each element of the complex Major Trafficker statute. With so many lives at stake, we must take immediate action once we locate a large stash of drugs. Unless a wiretap is already in place, it could take weeks or even months to build the case for the Major Trafficker charge. By then our well-heeled offenders with extensive ties in foreign countries will be long gone.

While the legislature may not have intended to make it easier for Mexican cartels to smuggle drugs into and money out of New York State, this will be the result.

Judges arraigning defendants on top narcotics charges will not be permitted to assess whether bail is appropriate due to the seriousness of the charges, risk of flight or history of violence. The changes will undermine our most effective tools for cutting the supply line for lethal drugs and hobble efforts to fight the opioid epidemic.

A recent arrest in Harlem involved two defendants with cartel connections who were found in possession of over 60 pounds of fentanyl, heroin and cocaine, including packages labeled "Pablo Escobar." The defendants posed an obvious risk of flight. One is a foreign citizen here illegally and the other was found with $200,000 cash and dozens of bricks of narcotics in an apartment. After January 1, 2020, because neither was charged with violating the Major Trafficker statute, the arraignment judge would be required to release both with no bail.

Each week's caseload offers new examples. Last week, a defendant was arraigned on an indictment stemming from a short term investigation into a heroin packaging organization. The operation was based in Fordham Manor, Bronx, where overdose death rates are roughly double the national average. On April 24, 2019, the defendant was inside an apartment along with a gun, approximately $150,000 cash and enough heroin, fentanyl and drug packaging materials for tens of thousands of doses. The apartment building abuts a

On January 1, 2020, two defendants arrested in possession of 60 lbs. of narcotics will walk out of court with no bail set. These drugs were seized on March 28, 2019 at 630 Lenox Avenue in Harlem, Manhattan.

Catholic school and a public school is down the block. Contraband was found inside furniture outfitted with hidden compartments, known as "traps," a hallmark of sophisticated drug organizations. Because the defendant resided in the apartment, the presence of the gun alone did not qualify as a violent crime. The defendant was indicted post-arrest on a top count of Criminal Possession of a Controlled Substance in the First Degree and is being held on $250,000 bail. Because he is not charged as a Major Trafficker, after January 1, 2020 a judge will be required to release him.

A defendant who operated a sophisticated drug packaging operation adjacent to a school in Fordham Manor will be released without bail on January 1, 2020. Furniture outfitted with secret compartments concealed narcotics, a gun and approximately $150,000.

This is not my only concern. A new statute that rigidly delineates by Penal Law charge which defendants must be released after arrest and which may be considered for pretrial detention is unwise. The appropriate person to make that determination is a judge, who can review the facts of the alleged offense and a defendant's individual circumstances. I am concerned that the public is woefully unaware of the implications of some of the new laws.

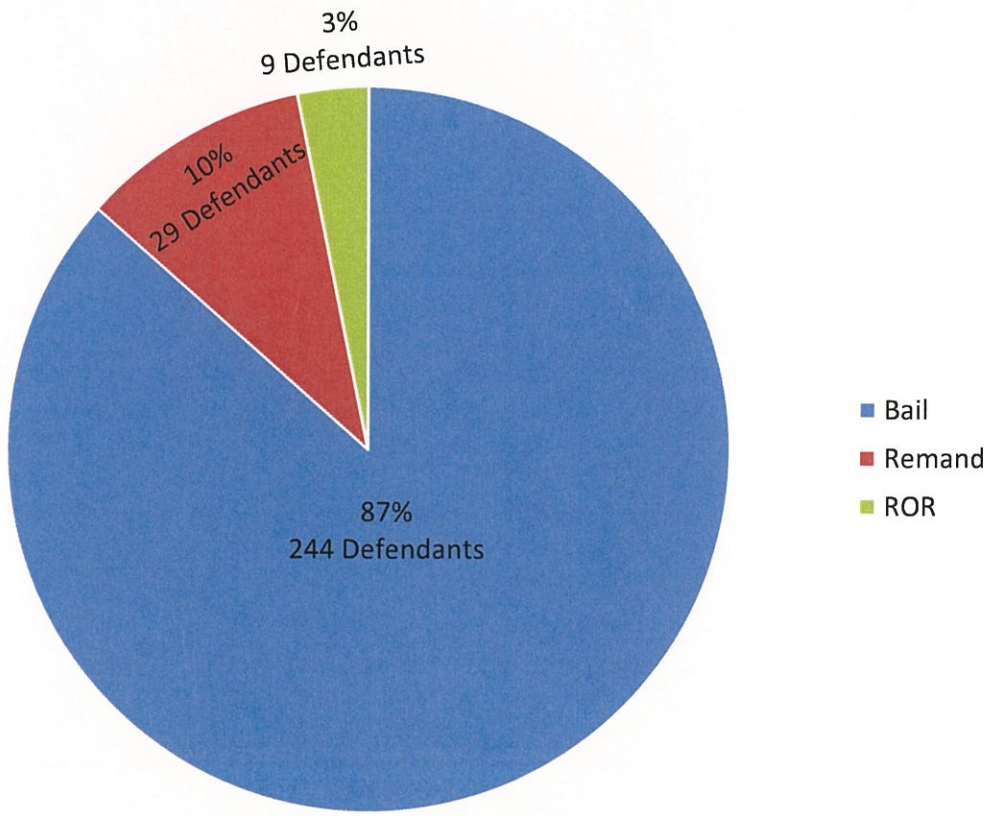
For example, we recently prosecuted a longtime physician who fueled opioid addiction by running multiple pill mills and bilked Medicaid and Medicare out of millions of dollars. Following the doctor's arrest on 280 counts, including a top charge of Health Care Fraud, a B felony, a judge determined no set of circumstances could ensure the doctor's return to court and ordered remand. Among the judge's considerations were the physician's extensive real estate portfolio, including properties in Moscow, and a recent wire transfer of $480,000 to a Russian account.

Under our new law, a judge confronted with the same clear evidence of massive wealth coming from operating multiple pill mills, significant foreign assets and ties abroad – in other words ample resources and every incentive to flee – would be powerless to set bail. Not even Bernie Madoff could be held on bail were he to be prosecuted under New York State law.

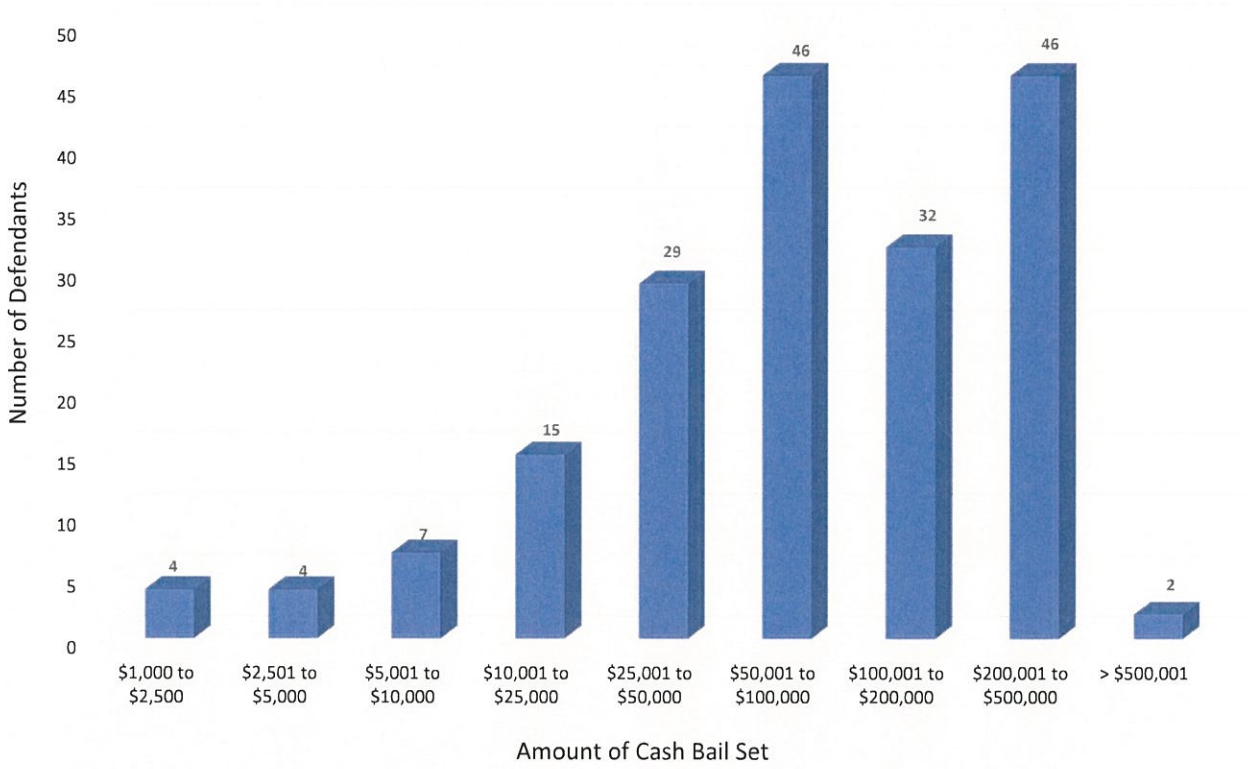
The legislation has been promoted as benefitting non-violent and low level offenders. A frequently used example is of a defendant who lingers in jail because of an inability to pay a small amount of bail on a low level charge. An analysis of our caseload and defendants who are held in on A 1 and A 2 charges paints a very different picture.

We ask that the City Council support my office in advocating for a proposed chapter amendment to add A level drug offenses to the definition of "qualifying offense." Please see the proposed language on the final pages of this testimony. It is nine simple lines. This small change would be consistent with the Governor's original criminal justice reform proposal and would provide a measure of help in allowing us to continue to protect this city from major narcotics traffickers.

Arraignment Outcome for 2017 & 2018 Open A-1 Non-Major Trafficker and A-2 Dockets



Cash Bail Set for Non-Major Trafficker A-1 Offenses, 2017 & 2018 Dockets



Speedy Trial and Discovery

Another poorly publicized provision of the new discovery statutes mandates that the District Attorney provide the name and contact information for all persons who have information relevant to any charge within 15 days of the defendant's first appearance in criminal court. We must also provide in that time frame all information relevant to the prosecution, with some additional time for complex cases. While we are still in the process of assessing what additional resources, staffing and funding will be needed to meet these new obligations, it will no doubt be substantial.

For example, it is unthinkable that the prosecution would turn over the name and contact information of a witness without first interviewing her, alerting her to the impending disclosure and assessing any potential safety risks. This will now need to be done within the very short 15-day timeframe. Moreover, the expansive definition contained in the statute means that prosecutors will have to undertake and complete these tasks not simply with respect to witnesses who may testify at trial, but with countless other individuals as well. In instances where the safety of a witness is in jeopardy, we must seek to obtain judicial orders to prevent disclosure of sensitive information.

Many law enforcement operations are initiated based on civilian complaints about criminal activity. The complaints come from all sorts of people, from grandmothers who sit at the window watching their courtyards to store owners who tell the police what they see on the corner. Interviews of these witnesses, which now focus on obtaining a complete and accurate account of events, will require far more time and attention from prosecutors. Safety and privacy concerns will have to be addressed to alleviate witnesses' predictable reluctance to cooperate. All this will require substantial additional prosecutorial resources.

The disclosure requirements will require close collaboration with the NYPD, and we are already working to assess how we will be able to comply with the new law. Budgetary needs that we have submitted to the Office of Management and Budget (OMB) regarding new expenditures follow.

The Office of the Special Narcotics Prosecutor will require significant additional resources in order to comply with the new discovery legislation, including additional legal and support staffing, and investments in Information Technology (IT) services. Due to ongoing discussions with the Mayor's Office of Criminal Justice and the District Attorneys, I can only provide a general outline of our needs at this early stage.

The legislation requires full discovery in all cases, including before a plea can be accepted, unless such discovery is waived by the defense. The types of information covered under the discovery statute are considerably broader under the new legislation. Additionally, we will be operating under an accelerated timeframe that requires disclosure of the bulk of the information within 15 days of a defendant's first appearance in criminal court, rather than in preparation for hearing and trial. This unfunded mandate includes sanctions for failure to comply.

Additional IT services, software and hardware will be necessary in order to expedite the discovery process and store the increased volume of digital materials. These changes come at a challenging time for us, as we are already operating with dated PCs and struggle to support current needs. We recently submitted a capital funding request for a PC upgrade (our last capital funding was in 2012) and are asking the City for assistance in expediting the review and grant process.

Staffing Needs

We are continuing to evaluate new demands placed on our office. In order to meet these new demands, we have identified the following new staffing needs:

- Additional Assistant District Attorneys to allow current staff to devote more time towards meeting expanded discovery obligations and handling related litigation, all within an accelerated timeframe.

- Additional paralegals and other support staff to assist Assistant District Attorneys with identifying and organizing expanded categories of discovery materials.

- Additional IT staffing to include:
  - 1 junior system administrator to perform backup/recovery administration, storage support, and monitoring.
  - 1 junior application development and reporting analyst to create maintain and analyze internal databases.
  - 1 helpdesk/trainer to provide technical support and troubleshooting services.

IT Needs

Below is a preliminary list of high priority IT needs:

- Software for collecting, sending and creating records of electronic discovery, such as "Office 365 Discovery Sharing" at an annual cost of approximately $31,000 based on current DoITT contract.

- Expanding internal storage for processing and storing the vastly growing volume of digital evidence, including videos. Based on prior storage projections, we anticipate an initial cost of over $400,000 and ongoing annual costs of approximately $15,000.

- Improved computers and media redactor software in anticipation of the heavy demand to review and redact all videotapes featuring undercover officers within 15 days of Criminal Court Arraignment. The anticipated cost of 5 power computers is approximately $100,000 and we are still in the process of pricing the new software.

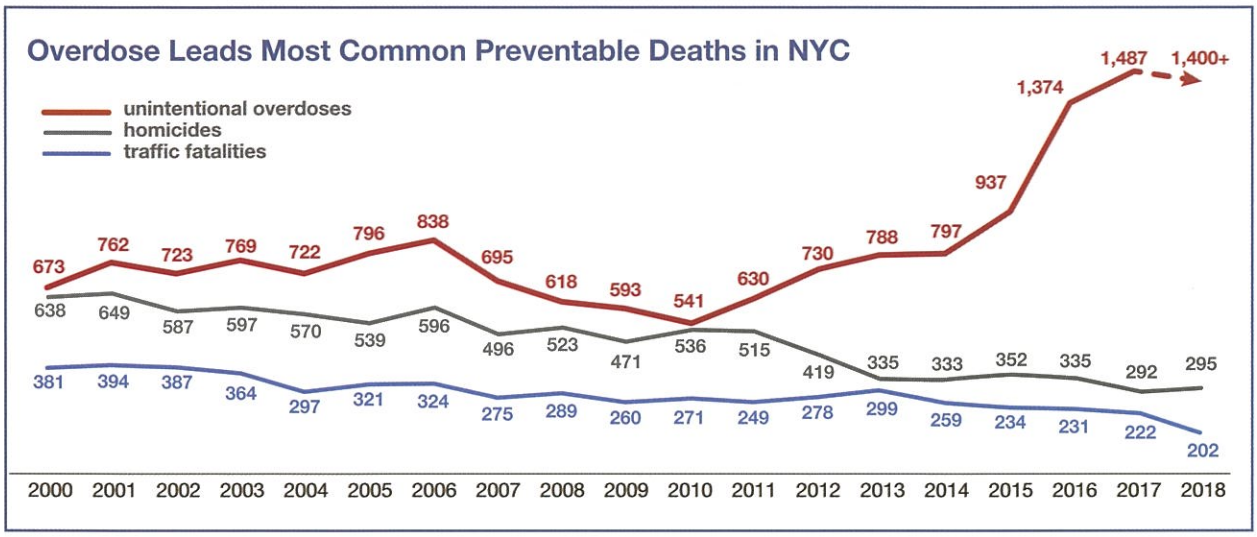
- Multi-functional scanners/printers. Although it is essential that police paperwork is received electronically, we anticipate that there will be records that are not received electronically and will need to be scanned. The annual cost of 3 multi-functional printer/scanners is approximately $15,000.

- Increase internet bandwidth required for uploading and downloading discovery material with NYPD and defense attorneys. We are still in the process of pricing this.

I urge the committee to take a close look at what the new legislation really means for this city – and to look beyond the press releases and superficial media coverage to date. There is a lot that New Yorkers will not like in this package.

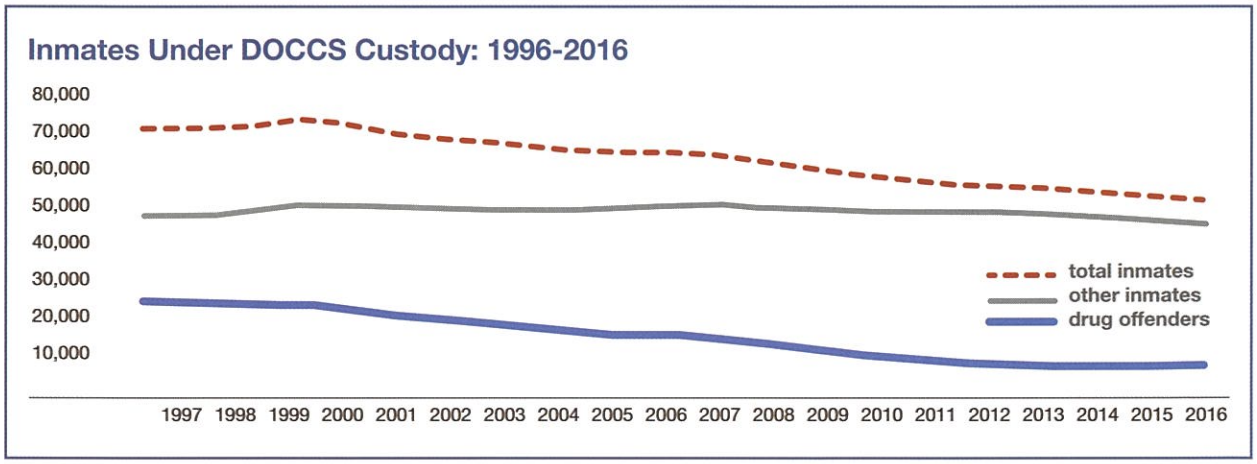
It is our duty to explain to the citizens of this city the sweeping changes, incorporated into a budget bill, hastily approved by legislators facing a looming deadline. They probably did not have had a chance to read and process the effects of the comprehensive bill. Under those circumstances, mistakes were made. But it not too late to fix them. This hearing is a start.

A Strategic Approach



While overdose fatalities remain the leading cause of preventable death in New York City, there are signs of progress. After seven consecutive years of increases, the number of overdose deaths appears to have stabilized in 2018. An estimated 1,400 people or more fatally overdosed in 2018, which is roughly comparable to the 1,487 who died of overdoses the year before. As of 2017, New York City remained below the national average at 21.2 deaths per 100,000 as compared to 21.7 per 100,000.

SNP and the city's five District Attorneys are at the forefront of efforts to address the opioid crisis. SNP investigations resulted in the removal of three tons of heroin, fentanyl and cocaine from the black market in five years. Together with our partners in the New York City Police Department (NYPD) and the U.S. Drug Enforcement Administration (DEA), we have implemented a strategic approach targeting large scale fentanyl and heroin distributors, those who sell drugs linked to overdoses, pill mills and drug-related violence. Our approach is consistent with the city and state goals of reducing arrest and incarceration rates.



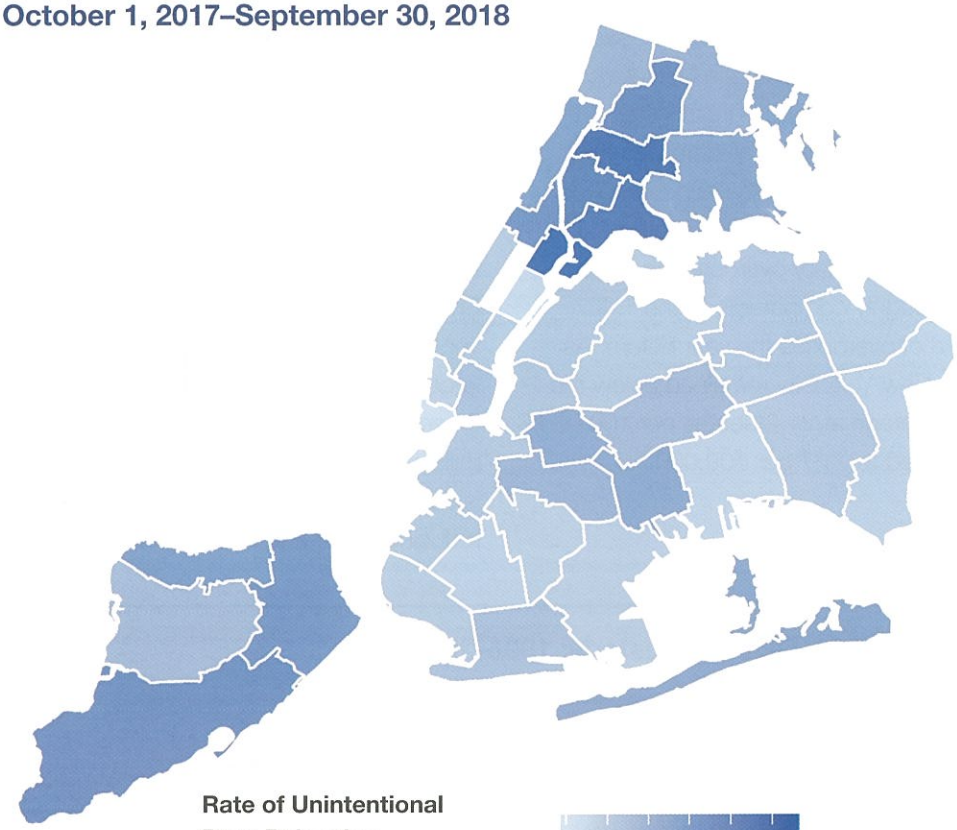
Decline in state prison sentences for drug offenders drives overall reduction in incarceration.
Source: New York State Division of Criminal Justice Services

While the overall number of overdose deaths in the city is not currently escalating, it remains unacceptably high. On average, four lives are lost each day due to the opioid epidemic. Over time, the epicenter of the crisis in New York City has shifted to the South Bronx and Upper Manhattan. SNP investigations track narcotics distribution networks that base operations in these areas.

In 2018, the Bronx neighborhoods of Hunts Point-Mott Haven, Highbridge–Morrisania and Fordham-Bronx Park endured overdose death rates roughly double the national average, as did East Harlem in Manhattan. There is a strong correlation between high rates of overdose death and areas of high poverty.

In contrast, several neighborhoods in Staten Island that had consistently ranked among the city neighborhoods with the highest rates of overdose fatalities are seeing a decline in deaths. The community of Stapleton–St. George was among the city's top five hardest hit in 2017, but by 2018 this was no longer the case.

South Bronx and Upper Manhattan Neighborhoods Have High Rates of Overdose Death
October 1, 2017–September 30, 2018



Source: New York City Department of Health and Mental Hygiene, 2018 Provisional Overdose Report, Quarters 1-3.

Supply Reduction

Our top priority is to prevent overdose deaths by removing the supply of dangerous drugs at the highest level possible and disrupting street markets in New York City, a regional distribution hub. Investigations track shipments of narcotics traveling well established trafficking routes that Mexican cartels use for smuggling heroin, cocaine and now fentanyl. Many of these loads wind up in the Bronx at large-scale drug packaging operations. Our largest seizures of fentanyl and heroin were clustered around major thoroughfares in the borough.

Intercepting fentanyl analogs poses new challenges. Perhaps the most lethal substances we have encountered in the ever evolving opioid crisis, lab-created analogs mimic the effects of fentanyl and have nearly identical chemical structures. Detection can be difficult, as forensic laboratories must test for each variation individually.

An international investigation by SNP and the New York Drug Enforcement Task Force (DETF) resulted in the seizure of 32 kilograms of fentanyl and heroin (nearly 70 pounds) worth up to $10 million in the Bronx and Yonkers. Laboratory analysis revealed the analog valeryl fentanyl was also recovered. The head of a local trafficking network and a Mexico-based alleged narcotics supplier were arrested while meeting together in October of 2018.

At the time of the arrests, the Office of the Chief Medical Examiner (OCME) identified at least 11 overdose deaths in the city involving valeryl fentanyl. While not linked to our particular investigation, the deaths underscore the dangers posed by fentanyl analogs. Shockingly, valeryl fentanyl remains legal in New York State.

While it is illegal to possess or sell fentanyl analogs under federal law, only select analogs are included on the New York State list of controlled substances. Beyond this obvious hurdle, orders for small quantities of fentanyl analogs are placed through the dark web and parcels are shipped via package delivery services. Transshipment points in Europe and Canada are used to conceal the origin.

Top Five SNP Seizures Clustered in the Bronx

Investigations in 2018 resulted in large seizures of narcotics clustered around major thoroughfares in the Bronx.

Emerging Trend: Counterfeit Pill Manufacturing

Counterfeit oxycodone made from fentanyl is often produced in Mexico and is increasingly common in NYC's black market.

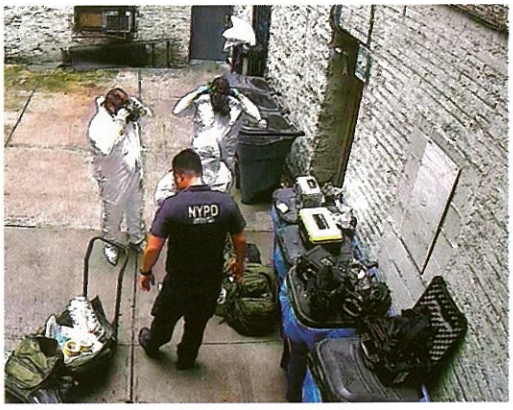
A disturbing upsurge of counterfeit pills containing fentanyl has appeared on the black market in New York City. Intelligence suggests Mexican cartels are manufacturing these pills to resemble oxycodone. Local New York City organizations are also pressing pills, posing a grave threat to buyers who wrongly believe the pills are manufactured by a pharmaceutical company.

Recent investigations yielded approximately 20,000 fentanyl pills believed to have originated in Mexico. Blue in color, with markings identical to oxycodone, these pills carried a street value of up to $600,000. Nearly 14,000 tablets were found in a cellphone store in the Fordham Manor neighborhood of the Bronx in a search by NYDETF and a Port Authority Police K-9. Days earlier, agents seized 6,000 identical pills from a car traveling southbound on the FDR Drive in Manhattan.

Separately, the New York Organized Crime Drug Enforcement Strike Force dismantled a Bronx-based organization that pumped out thousands of counterfeit oxycodone pills containing a mix of heroin and fentanyl, as well as fake ecstasy pills made from methamphetamine. Two defendants made street sales of purported oxycodone pills to undercover officers and were arrested in possession of 3,000 counterfeit oxycodone pills. The pill manufacturing ring allegedly commandeered a boiler room studio apartment with help from a complicit building superintendent.

Agents donned personal protective equipment to prevent contact with dangerous substances. A bathroom contained a pill press machine covered in a powdery residue, and pill press imprints designed to create oxycodone markings, multiple surgical masks and a vacuum sealer. A refrigerator held food storage containers filled with substances in assorted colors. Agents seized approximately 2,500 counterfeit oxycodone and fake ecstasy pills, a pound of heroin and a pound of methamphetamine.

Agents donned protective gear to enter an illicit pill manufacturing location in the Bronx. Drug residue coated equipment used to create thousands of counterfeit oxycodone pills from fentanyl.



Overdose Death Investigations

In response to overdose deaths across the city, the District Attorneys and SNP work in partnership with the NYPD and DEA to identify sources of the lethal supply through wiretaps, surveillance and other investigative tools. More than half of all overdose fatalities in New York City have been linked to fentanyl and particular fentanyl analogs through painstaking analysis by OCME and the NYPD.

Some drug sellers put customers' lives in danger by knowingly concealing that they are selling fentanyl. Because fentanyl is much more potent than heroin, using street drugs is akin to playing Russian roulette.

A recent investigation followed a 28-year-old man's fatal overdose at a diner in Manhattan's Upper East Side. Thirteen defendants were charged, including a Bronx man accused of peddling potent fentanyl-laced heroin knowing that it could cause overdoses. Jose Jorge, aka "Cataño," allegedly told an undercover officer that fentanyl was good for business, because it gives a higher high and also wears off faster.

Cataño acknowledged the dangers of overdose, especially for those customers who had not used opioids recently or who were accustomed to heroin. He told the undercover officer that he was aware that the 28-year-old victim had died. Yet he continued to sell fentanyl. Cataño faces charges of Conspiracy, Criminal Sale of a Controlled Substance and Reckless Endangerment.

Also arrested was a former police officer, Edward Wagner, whose son died during the investigation. Wagner's son was acquainted with the 28-year-old overdose victim and attracted law enforcement scrutiny as a potential source of lethal fentanyl. Prior to his death, the son made multiple purchases of narcotics, including fentanyl, from Cataño and resold the drugs to an undercover officer. Wagner allegedly chauffeured his son to narcotics sales and later sold directly to the undercover officer.

Upper East Side overdose sparks drug probe that nets 13 suspects, including a retired cop

By SHAYNA JACOBS
NEW YORK DAILY NEWS | MAR 07, 2019

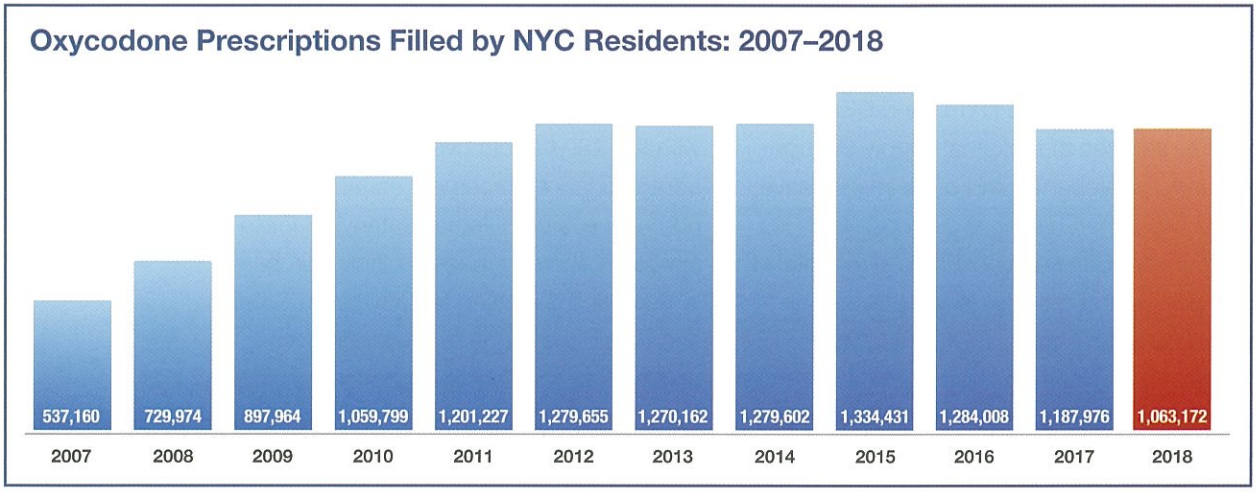
Edward Wagner, 65, at arraignment in state Supreme Court on March 7, 2019 in New York. Wagner, a retired cop, faces drug sale and conspiracy charges in a multi-defendant indictment by the Office of the Special Narcotics Prosecutor. (Alec Tabak for New York Daily News)

A drug overdose death in an Upper East Side diner a year ago sparked a probe that led to the arrests Thursday of 13 people on drug possession and sale charges — including a retired cop, authorities said.

The case began in a bathroom of a diner on York Ave. on Jan. 22, 2018, where a man whose name was not disclosed overdosed on a deadly mix of fentanyl, heroin and alprazolam, which is often sold under the brand name Xanax.

New York Daily News, March 7, 2019

Prescription Drug Investigations



Since its creation in 2011, SNP's Prescription Drug Investigation Unit (PDIU) has targeted numerous large-scale pill mills, pharmaceutical drug trafficking rings and corrupt medical practitioners who sell prescriptions for highly addictive pills in exchange for cash. As a result of these efforts, combined with improved education for doctors, increased public awareness and more effective regulatory systems, such as the state's implementation of its Internet System for Tracking Over-Prescribing (I-STOP), the black market supply of diverted prescription drugs in New York City has been reduced.

Our investigations have uncovered a wide array of criminal schemes that share a common goal: to turn a profit from illegally prescribed drugs. Two cases resulted in doctors being charged with Manslaughter in connection with patients' overdose deaths. The first of these cases resulted in a conviction by jury and a 10-year prison sentence. The second case is pending against Dr. Lawrence Choy, who faces two counts of Manslaughter and multiple counts of Reckless Endangerment in connection with three patients' deaths. Choy allegedly used his medical practice in Flushing, Queens to illegally prescribe opioid medication and other addictive prescription drugs in large quantities and dangerous combinations for no legitimate medical purpose. The activity continued even when patients demonstrated clear signs of addiction, such as failing health, frequent accidents and entering drug treatment programs.

Bridget G. Brennan announced the indictment of Dr. Lawrence Choy.

A physician for over 35 years, Choy allegedly began these illegal prescribing practices in 2012, at a time when there were tax warrants filed against him for more than $1 million. Choy abandoned his practice. He and was arrested in Sheboygan, Wis.

Other corrupt medical practitioners who operate pill mills cater to drug trafficking networks seeking to resell pills on the street, or prey on vulnerable patients to defraud

publicly subsidized insurance programs. Dr. Lazar Feygin admitted to orchestrating overlapping schemes that resulted in millions of pills of oxycodone being illegally dispensed and millions of dollars in fraudulent claims being billed to Medicaid and Medicare.

Feygin pleaded guilty to 16 felony charges, including multiple counts of Conspiracy, Criminal Sale of a Prescription and Health Care Fraud. A total of 13 individuals were charged and three Brooklyn pill mills shuttered.

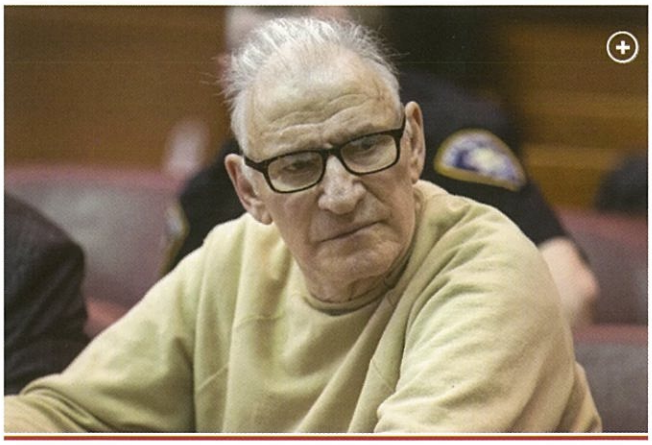
The scheme resulted in illegal prescriptions for 6.3 million oxycodone pills between 2012 and 2017. Feygin operated Parkville Medical Health, P.C. in Kensington and LF Medical Services of NY, P.C. in Clinton Hill, while his protégé, Dr. Paul McClung, operated a third clinic. Under Feygin's direction, medical professionals and office staff employed at his clinics allegedly subjected patients to unnecessary medical tests that were then fraudulently billed to Medicaid and Medicare. To induce patients to submit to these tests, Feygin and his staff illegally provided patients with prescriptions for oxycodone, an addictive opioid painkiller, for no legitimate medical purpose.

Among New York State's top Medicaid billers, Feygin's clinics received over $16 million in reimbursements from Medicaid/ Medicare in five years, while the McClung clinic brought in over $8.6 million. Feygin held extensive real estate holdings and made frequent trips overseas. Feygin is the subject of a federal civil forfeiture action overseen by the U.S. Attorney's Office for the Eastern District of New York.

Crooked doctor who admitted to running 'pill mills' takes plea deal

By Olivia Bensimon

March 11, 2019 | 8:19pm | Updated



Dr. Lazar Feygin
Erik Thomas

MORE ON:
DOCTORS

Bronx surgeon is a sex-crazed, scheming con man: lawsuits

DMV revokes doctor's 'XX XY' plates for being 'objectionable'

HIV-positive woman becomes first to donate kidney to another patient with virus

City passes bill to remove abusive doctors' names from birth certificates

A crooked doctor who admitted to running "pill mills" out of his Brooklyn clinics will spend five years in the slammer.

Dr. Lazar Feygin, 72, pleaded guilty to 16 felonies, including conspiracy, criminal sale of a prescription and health care fraud as part of a plea deal, according to the city's Special Narcotics Prosecutor.

From the beginning of 2012 through February 2017, Lazar prescribed nearly four million tablets of oxycodone to patients who didn't need them.

Feygin also admitted that he subjected patients to unnecessary medical tests and prescribed unneeded physical therapy then fraudulently billed Medicare and Medicaid.

The Belarus native was busted in 2017 along with 13

New York Post, March 11, 2019

Statewide Coordination

A leader in the field of narcotics investigations and prosecutions, SNP works to develop innovative approaches and to share its expertise. Given New York City's position as a trafficking hub, SNP often encounters drug trends before the rest of New York State. The office's Heroin Interdiction Team (HIT) focuses on cooperation with local prosecutors and law enforcement to share intelligence and resources. Criminal organizations operating in the city commonly impact other jurisdictions. For example, drug packaging mills spread heroin and fentanyl from New York City to neighboring regions.

In partnership with the New York Prosecutors Training Institute (NYPTI), HIT facilitates regional conference video calls with District Attorneys statewide to discuss enforcement strategies and to share information on emerging issues, such as fentanyl analogs and other substances causing spikes in overdose deaths.

Each regional conference video call involves District Attorneys' Offices from around the state.

Participants discuss methods they're employing to combat the opioid crisis, unique struggles relevant to their county and potential solutions.

In January of 2019, SNP offered an educational session on narcotics trends and solutions at the District Attorneys Association of New York (DAASNY) 2019 Winter Conference. Along with presenting vital information on the scope and trends of the opioid epidemic, the session provided a space for a panel of District Attorneys to discuss initiatives within their counties. Alternative to incarceration programs highlighted this year include:

- **Bronx County District Attorney's Office** Overdose Avoidance and Recovery (OAR)
- **Suffolk County District Attorney's Office** Comprehensive Addiction Recovery and Education program (CARE)
- **Broome County District Attorney's Office** Treatment Alternative to Prosecution (TAP)
- **Washington County District Attorney's Office** Washington County Felony Drug Treatment Court (WCFDTC)

District Attorney J. Anthony Jordan presents on the state of narcotics in Washington County.

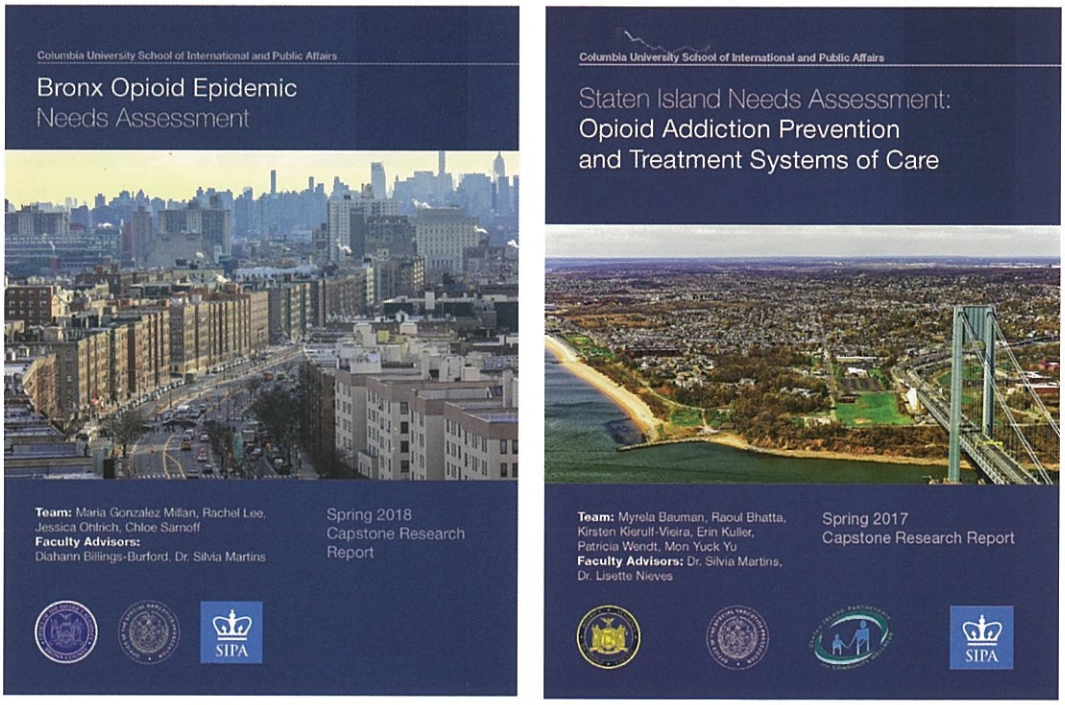
Prevention and Education

A wide variety of efforts are underway in New York City to reach people with substance use disorders and ultimately to save lives. The District Attorneys have launched a variety of initiatives to connect eligible defendants with peer counselors and treatment services in lieu of facing prosecution.

Beyond SNP's core mission to reduce the supply of narcotics, the office advocates for education and prevention messages to inform the public about fentanyl and the much-heightened risks associated with the use of street drugs.

SNP, Staten Island District Attorney Michael E. McMahon and Bronx District Attorney Darcel D. Clark are serving as clients on a capstone project with Columbia University's School of International and Public Affairs (SIPA). Currently, a team of graduate students is conducting research to explore effective educational strategies and prevention messaging about opioid drugs for middle school and high school students citywide. The study will yield an independent report and related pilot projects.

Over the past two years, SIPA capstone teams conducted research on the impact of the opioid epidemic in Staten Island and the Bronx, with a focus on treatment options and gaps. The Staten Island study, completed in May 2017, resulted in a report entitled, "Staten Island Needs Assessment: Opioid Addiction Prevention and Treatment System of Care." for which The Staten Island Partnership for Community Wellness served as a co-client. The Bronx study, completed in 2018, resulted in a report entitled, "Bronx Opioid Epidemic: Needs Assessment." Students consulted with elected officials, members of the law enforcement and legal communities, public health professionals, treatment providers, academic researchers and advocacy groups.



Students from Columbia University have conducted research on the opioid epidemic over the past three years, with SNP, the Staten Island District Attorney's Office and the Bronx District Attorney's Office serving as clients.

SNP Outreach

Sharing Expertise with Local and International Partners

A delegation of narcotics investigators from the Republic of Korea Prosecution Service met with SNP staff to discuss narcotics enforcement strategies.

SNP's Money Laundering and Financial Investigations Chief Clark S. Abrams (second from left) attended a conference in Gurnsey, Channel Islands.

Bridget G. Brennan participated in a conference, "Legal Solutions to the Opioid Crisis," organized by the Center for Ethics and Rule of Law at University of Pennsylvania Law School.

Donna M. DePola, founder of The Resource Training Center (left), offered a tour of the Elev8 Center New York, a new treatment facility in Harlem.

Bridget G. Brennan joined Calvin Solomon, SNP's Director of Community Outreach (center right), at a 28th Precinct Clergy Breakfast in Central Harlem.

Professional Recognition

The Asian American Bar Association presented Bridget G. Brennan with a recognition award for her commitment to diversity.

Left: Bernice Ordoñez, Deputy Chief of SNP's Special Investigations Bureau (far right), received the Thomas E. Dewey Medal from the New York City Bar Association.

Below: Bridget G. Brennan delivered a keynote address at the Cambridge International Symposium on Economic Crime, where she was honored for 20 years of service as Special Narcotics Prosecutor.

Community Initiatives

In partnership with the city's five District Attorneys, SNP seeks to leave a positive imprint on communities touched by our major drug enforcement operations by investing in the development of the neighborhood youth. SNP and the Brooklyn District Attorney's Office sponsored the Police Athletic League's (PAL) After School Filmmaking Project following a long-term investigation in the vicinity of the Roosevelt Houses, a New York City Housing Authority (NYCHA) residential development in Bedford-Stuyvesant, Brooklyn. Youth explored their creativity while learning how to make their own film, including fundamentals of film and video and the steps of narrative filmmaking from pre-production to post-production.

The 32-week project culminated with a student film festival, The PAL Wynn Center Film Premiere, hosted by PAL Director Frederick Watts, Bridget G. Brennan and Brooklyn District Attorney Eric Gonzalez. Attendees were treated to screenings of two student films. Funding was derived from SNP's Safe Neighborhood Initiative.

Middle school students dressed up like movie stars for the film premiere.

The After School Filmmaking Project culminated with a screening of student films "Broken Ankles" and "The Haunting at the Wynn Center."

Investigation Division

2018 SNP WIRETAP ACTIVITY	
Amendment	28
Extension	151
Original	127
TOTAL	306
INSTRUMENT TYPES	
Cellphone	144
Chat Accounts	0
BBM	1
Other	1
TOTAL	146
INVESTIGATION ACTIVITY	
Trial Division	185
Special Invest. Bureau	137
Prescription Drug	48
Narcotics Gang	4
Money Laundering/ Financial Crime	3
Executive	1
TOTAL	378

Special Investigations Bureau

The Special Investigations Bureau (SIB) targets major narcotics trafficking organizations, including those that import and distribute multi-kilogram quantities of heroin, fentanyl and cocaine. The activities of these criminal enterprises extend beyond county, state and international borders. SIB prosecutors work with the U.S. Drug Enforcement Administration (DEA), the New York City Police Department (NYPD), the New York State Police, the New York Drug Enforcement Task Force (NYDETF), the New York Organized Crime Drug Enforcement Strike Force, Homeland Security Investigations (HSI) and other local, state, federal and foreign law enforcement agencies.

In 2018, SIB launched 137 investigations targeting a wide range of criminal activity including drug trafficking, murder conspiracy, robberies, weapons trafficking and money laundering. The bureau also commenced civil actions to forfeit narcotics proceeds. Senior staff supervised wiretap investigations involving 306 eavesdropping applications, including 127 originals, 151 extensions and 28 amendments. Narcotics investigations resulted in the seizure of approximately 514 pounds of heroin and fentanyl, 306 pounds of cocaine, 450 pounds of marijuana and quantities of various other drugs.

Heroin Interdiction Team

The resurgence of heroin throughout New York State drove SNP to create the Heroin Interdiction Team (HIT) in late 2014. HIT is tasked with combating the flow of heroin to the area surrounding New York City, particularly upstate counties. Working with a dedicated team of New York State Police troopers, DEA agents, NYPD officers and other law enforcement officials, HIT focuses on cooperating with local prosecutors and law enforcement to share intelligence and resources to take down the organizations responsible for spreading heroin from the mills in New York City to New York State as a whole.

Prescription Drug Investigation Unit

Alarming rates of prescription drug abuse and related crime led SNP to form the Prescription Drug Investigation Unit in 2011. The unit is designed to combat the proliferation of prescription narcotics on the black market by investigating and prosecuting the criminal distribution of these drugs. Prosecutions target a range of subjects, from members of street-level drug

organizations to doctors and pharmacists engaged in the criminal sale of prescriptions or pills. The unit also conducts investigations into doctors whose opioid prescriptions cause patient overdoses, bringing homicide charges where appropriate. Armed robberies of pharmacies, shootings, home invasions and other violent crimes are also associated with prescription drug diversion. The unit works closely with the New York State Health Department's Bureau of Narcotic Enforcement, the NYPD and the DEA, among other law enforcement agencies.

Narcotics Gang Unit

The Narcotics Gang Unit concentrates on violent neighborhood gangs, robbery crews and weapons traffickers committing drug-related criminal activity across the city. The unit, established in 2002, works closely with detectives from the NYPD's Gun Violence Suppression Division, Narcotics and Gang Squads, and Precinct members. The unit has developed expertise in the use of new technologies and collecting evidence through social media and messaging applications. In addition to narcotics trafficking, the unit also prosecutes murder and murder conspiracy, assault, armed robbery, kidnapping, burglary, weapons possession and illegal firearms sales.

Money Laundering and Financial Investigations Unit

The Money Laundering and Financial Investigations Unit was initiated in 2001, and reconfigured in 2005 and 2008. It investigates narcotics-related money laundering and other financial criminal activity. Cases are generated from multiple sources, including intelligence developed during narcotics investigations. The unit aims to prevent foreign drug trafficking organizations from repatriating drug proceeds through smuggling, as well as the use of the financial system and international trade, and local drug organizations from benefiting from illicit profits.

Forfeiture Investigations

Established more than 25 years ago, the Forfeiture Investigations Unit evaluates felony drug prosecutions for potential civil litigation to recover proceeds of narcotics crimes. The unit works closely with law enforcement on the federal, state and local levels to identify criminal assets and deprive narcotics traffickers and money-laundering groups of the profits of criminality. The unit has in place a comprehensive set of systems to track office participation in investigations resulting in forfeiture actions. In 2018, 200 federal forfeiture actions were initiated and 203 were completed. At the state level, 255 actions were initiated and 352 were completed.

The expertise and dedication of Assistant District Attorneys and Investigative Analysts has positioned PDIU as a leader in the field.

Trial Division

Trial Division Assistant District Attorneys handle the bulk of the drug felony arrests referred to the office for prosecution. They are assigned to one of the two bureaus; each bureau is headed by a Chief and Deputy Chief who supervise assistants as they draw up court orders, including search and arrest warrants, on a 24-hour basis.

Assistants work closely with the NYPD, NYDETF, the Port Authority Police, the New York State Police and the SNP Investigators Unit. In 2018, the Division launched 185 new investigations. A total of 1,467 complaints were referred to the office for prosecution; 1,141 defendants were prosecuted by indictment or Supreme Court information (SCI). Total SNP search warrants drafted numbered 1,783.

The Trial Division handles the majority of arrests referred to SNP for prosecution.

2018 SNP WORKLOAD	
Arrests	1,467
Indictments/SCI	1,141
Trials	27
FELONY DISPOSITIONS	
Convicted	961
Acquitted	8
Dismissed	96
Treatment Dismissals	51
FELONY SENTENCES	
State Prison	451
City Jail	201
Probation	193
City Jail & Probation	33
SEIZURES	
Cocaine	418 lbs.
Heroin	364 lbs.
Fentanyl	377 lbs.
Heroin/Fentanyl Mixtures	166 lbs.
Oxycodone	27,259 pills
Methamphetamine	161 lbs.
Marijuana	504 lbs.*
Guns Seized	65

** 435 lbs. seized in Queens and case referred to DA for prosecution*

Investigators Unit

SNP's Investigators Unit handles narcotics cases targeting local, national and international trafficking groups, as well as trafficking over the Internet. Teams within the unit have expertise in identifying and dismantling major heroin and fentanyl distribution networks, prescription drug diversion organizations and pill mills run by corrupt medical practitioners. Investigators provide crucial leadership in collaborative efforts with law enforcement partners.

Created in 1992, the unit fulfills two primary areas of responsibility: investigations and enforcement support. A Chief Investigator oversees the activities of the investigators and monitors all investigation-related expenditures.

The unit initiates cases independently and works jointly with federal, state and local law enforcement agencies throughout New York City and across the nation. During 2018, the unit opened 41 new investigations, resulting in 151 arrests. Of those, 123 individuals were charged with top felony narcotics counts and three with violations of money laundering laws. Investigations by the unit and its partners yielded seizures of over 300 pounds of narcotics and millions of dollars in drug trafficking proceeds.

Case Highlights

Prescription Drug Investigations

Queens Doctor Faces Homicide Charges in Patients' Deaths

Dr. Lawrence Choy was indicted on 231 counts, including homicide charges and criminal sales of prescriptions to 14 patients of his former Flushing, Queens medical practice. Three of the doctor's patients died of overdoses, including two patients whose deaths are the subject of manslaughter charges. A physician for over 35 years, Choy allegedly began prescribing addictive opioid painkillers and other controlled substances in dangerously high dosages and potentially lethal combinations in 2012. The timing coincided with the filing of tax warrants against him for more than $1 million. Two of Choy's patients fatally overdosed three days after receiving prescriptions from him: one received prescriptions for the dangerous combination of oxycodone and alprazolam and the other received prescriptions for a combined total of 720 pills of oxycodone, alprazolam and a muscle relaxant. Choy abandoned his practice after he learned he was under investigation and was arrested in Sheboygan, Wis.

DAILY NEWS NYDailyNews.com

Deadly doc busted as an opioid pusher

BY KHADIJA HUSSAIN and LEONARD GREENE
NEW YORK DAILY NEWS

A DOCTOR WHO prescribed addictive painkillers and other controlled substances that resulted in three overdose deaths in New York was as much of a menace as a drug dealer pushing poison on the street, authorities said Thursday.

Lawrence Choy (photo) was arrested in Wisconsin, where he moved after local investigators visited the Flushing, Queens, office he used while treating the patients who died after taking drugs he allegedly prescribed.

Along with prescribing high dosages of addictive opioids, Choy allegedly disregarded federal guidelines by pushing other drugs that suppress a person's respiration.

The result, according to prosecutors, were the deaths of three men – two of whom died just three days after being prescribed the drug cocktail.

"Dr. Choy's blatant disregard to the practice of medicine became a parent's worst nightmare and an opioid addict's dream, said Drug Enforcement Administration Special Agent in Charge James Hunt.

"Similar investigations into the diversion of prescription medication have put doctors at the same level as drug kingpins; both types of traffickers push millions of doses of opioids into our communities, leaving grieving families in their wakes."

The victims included Eliot Castillo, 35, who suffered a fatal overdose on Feb. 23, 2013. He was found dead on a couch in his mother's Jamaica, Queens, home three days after he received a prescription from Choy, officials said.

An autopsy determined Castillo died from acute intoxication by the combined effects of oxycodone and alprazolam, more commonly known as Xanax.

Michael Ries, 30, died similarly a year later at his family's home in Hauppauge, L.I. Three days before Ries died, he received prescriptions for a total of 720 pills, or 24 pills per day.

Choy, 65, was charged with manslaughter in connection with the deaths of Castillo and Ries.

Daniel Barry, 43, who lived in Suffolk County, suffered an overdose and died in 2016. Choy was charged with reckless endangerment in connection with Barry's death.

He also faces 220 counts of criminal sale of a prescription for a controlled substance. Choy was arrested in Wisconsin in March and extradited to New York.

He attracted patients from Long Island, New York and Pennsylvania, said Bridget Brennan, New York's special narcotics prosecutor.

"We are facing an opioid epidemic that has many dimensions in this city," Brennan said. "If we are to get ahead of this problem we must turn off the source of supply. Many of his patients were turned into addicts. They did not walk into his office with an addiction issue."

New York Daily News, June 7, 2018

Doctor and Wife Ran Upper West Side Pill Mill

Rogelio Lucas, a doctor for more than 40 years, and his wife Lydia Lucas were convicted at trial for running a pill mill in the Upper West Side of Manhattan. Jurors returned guilty verdicts on Conspiracy and 29 counts of Criminal Sale of a Prescription for a Controlled Substance. Rogelio Lucas was sentenced to 1 to 4 years in prison and Lydia Lucas, who managed the medical practice, was sentenced to 1 to 3 years. Beginning in 2009, the couple's medical practice churned out prescriptions for $80 million in oxycodone in exchange for illegal cash payments. Approximately 3.2 million pills of oxycodone flooded the streets in connection with this criminal activity at a time when overdose death rates in New York City were peaking. Investigators recovered approximately $680,000 in cash from the Lucas's Scarsdale residence at the time of their arrests in 2015. In one year, the couple made approximately $500,000 in cash deposits into multiple back accounts. Rogelio Lucas surrendered his medical license in 2016.

Brooklyn Pharmacist Forged Painkiller Rxs

A pharmacist in Bensonhurst, Brooklyn was indicted for forging prescriptions for 5,000 oxycodone pills in order to illegally sell the pills. Inspectors with the Office of the Medicaid Inspector General (OMIG) noted discrepancies in the pharmacy's controlled

substance records and inventory. Eight prescriptions that proved to be illegitimate were numbered sequentially and purportedly issued by the same Brooklyn physician. The pharmacist admitted to inspectors that records related to the prescriptions were at her home. Each forged prescription bore a different patient name, but the same date. The estimated value of 5,000 30mg oxycodone pills is $150,000.

Fentanyl and Heroin in Bulk

70 Pounds of Heroin and Fentanyl Seized: Kingpin Charged

Five defendants were indicted in connection with over 30 kilograms of heroin, fentanyl and fentanyl analogs worth millions of dollars recovered in the Bronx and Yonkers. Alleged ring leader Juan Silva Santos, charged with Operating as a Major Trafficker, was arrested with an alleged representative of a Mexico-based drug supply organization at a Bronx restaurant. The supplier had flown into JFK Airport the previous day and visited a drug stash apartment on Underhill Avenue. Members of NYDETF recovered 18 kilograms of narcotics from the stash apartment, as well as drug packaging equipment. A search of Santos's luxury residence in Yonkers resulted in the seizure of $28,000 cash from a bedroom closet and 14 kilograms of heroin and fentanyl from inside a suitcase in a storage locker. These packages had been pressed to fit under the suitcase's lining. The locker was associated with Santos's apartment, but located in a common area of the building.

Fentanyl was stashed in a storage locker at a luxury apartment complex in Yonkers and a Bronx apartment outfitted with hidden compartments in the walls.

Mexico-based Fentanyl Source Indicted

A Mexico-based narcotics supplier was indicted on the charge of Operating as a Major Trafficker for flooding New York City with large loads of fentanyl. Francisco Quiroz-Zamora allegedly orchestrated the delivery of at least 20 kilograms of fentanyl (44 pounds) by phone from San José del Cabo. Members of the DEA's New York Organized Crime Drug Enforcement Strike Force were waiting to arrest Quiroz-Zamora as he arrived at Penn Station in order to collect a payment in November of 2017. Most of the fentanyl was found in a duffel bag atop a 7th floor vending machine inside the Umbrella Hotel in the Bronx. A nearby room was occupied by an alleged Quiroz-Zamora associate. The accused kingpin also

A duffel bag containing 17 kilograms of fentanyl was left on top of a hotel vending machine. The narcotics originated in Mexico.

supplied a drug crew headquartered at 448 Central Park West.

Tow Truck Carried Fentanyl Load

Approximately 17 kilograms of fentanyl were recovered from a van on top of a flatbed tow truck on Ridgewood Avenue in Yonkers, N.Y. Members of the NYDETF discovered the narcotics after tracking a separate vehicle accompanying the tow truck as it traveled from New Jersey to Yonkers. Three individuals present were arrested after a K-9 Unit detected the presence of narcotics inside the rear lift gate of the van. Agents learned one of the defendants was staying at a Holiday Inn Hotel in East Windsor, N.J. and conducted a search of his hotel room, recovering $49,000 cash contained in heat-sealed bags. A search of another defendant's Yonkers apartment led agents to seize a kilo press and drug ledger.

Fentanyl Hidden in Fish

Police detected something fishy when kilogram-sized food packages turned up in a suspected drug dealer's car in the Bronx. A pair of Styrofoam coolers contained four packages: three with fish inside and a fourth with chili. Closer inspection by officers with the NYPD's Queens Narcotics Major Case Squad revealed the food was wrapped around a white powdery substance covered in green plastic wrap. Police had identified the suspect during a wiretap investigation and obtained a court authorized warrant prior to searching the car. Laboratory analysis identified the powder as fentanyl. Johnny De Los Santos-Martinez was sentenced to four years in prison after pleading guilty to drug possession charges.

Hidden "trap" compartment concealed heroin, cocaine and illicit fentanyl pills.

Trafficker Arrested Following West Side Car Chase

Four were indicted and nearly two kilograms of drugs seized following a car chase and shots fired on the West Side Highway in September of 2018. Members of the NYDETF were conducting surveillance on a suspected drug packaging mill in the Bronx when they spotted a suspect, Jamarky Almanzar, leaving the area in a Jeep. A DEA agent and New York State Police trooper followed Almanzar southbound to the vicinity of the Intrepid Sea, Air & Space Museum. As the agent and trooper moved to stop the Jeep, Almanzar accelerated and attempted to mow down the trooper. As he escaped,

Members of DETF conducted surveillance on a drug packaging mill located in a residential building in the Bronx.

Almanzar hit multiple civilian vehicles, prompting the agent and the trooper to open fire and forcing the closure of a section of the highway. Almanzar fled back towards the Bronx with the agent and trooper in pursuit and repeatedly rammed the agent's vehicle. Almanzar was ultimately cornered and arrested in the vicinity of the drug packaging mill. Afterwards, members of NYDETF recovered nearly two kilograms of heroin, fentanyl and methamphetamine. Much of the heroin and fentanyl was in loose powder form, while 6,000 individual dose glassine envelopes had been packaged for street level distribution. Three others were arrested. In addition to drug possession charges, Almanzar was charged with multiple counts of assault, attempted aggravated assault upon a police officer and criminal mischief.

Heroin Smuggled from Chicago in Tomato Boxes

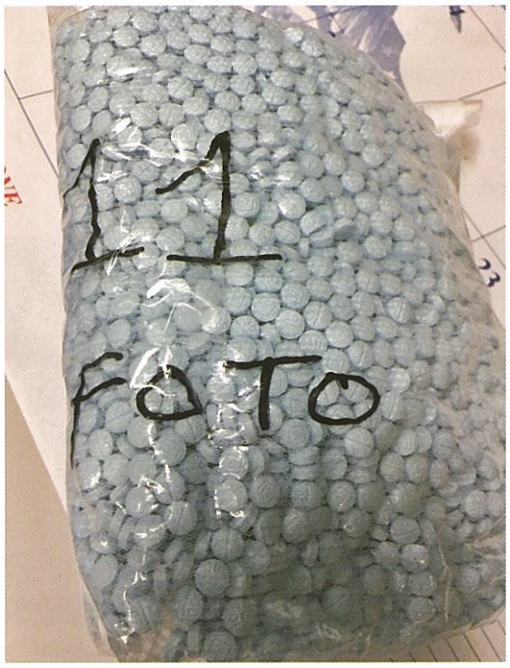
Two men who used tomato boxes with false bottoms to transport 10 kilograms of heroin (over 22 pounds) from Chicago were arrested. Members of NYDETF tracked the suspects' movements as they parked a U-Haul van at a Best Western motel in Fort Lee, N.J., and then drove across the George Washington Bridge into Manhattan. Agents stopped the suspects in Upper Manhattan and found a cardboard box containing two kilograms of heroin inside the vehicle. Upon returning to the motel, agents with a New York State Police K-9 Unit detected narcotics inside the U-Haul van. In the back of the van, boxes of raw tomatoes with false bottoms concealed eight kilograms of heroin. Agents learned that the load of narcotics was destined for a customer in the Bronx.

Tomato boxes concealed heroin trucked from Chicago.

Fentanyl Pressed into Counterfeit Pills

"Mexican Oxy" Contained Fentanyl

Over the course of one week, agents recovered 20,000 counterfeit 30 mg oxycodone tablets. The counterfeit tablets are believed to have originated in Mexico and would have carried a street value of up to $600,000. Members of NYDETF seized the pills in two



The 14,000 blue tablets seized closely matched the color and markings of prescription M30 oxycodone.

separate investigations in the Bronx and Manhattan. Four defendants are charged. Agents recovered 14,000 pills and two kilograms of heroin from a cellphone store in Fordham Manor in the Bronx with the assistance of a K-9 Unit with the Port Authority Police. Another 6,000 pills were found in a livery car near the FDR Drive.

Lethal Counterfeit Pills Made in the Bronx

A Bronx trafficking ring used a pill press to manufacture thousands of potentially lethal counterfeit oxycodone pills and fake ecstasy in a residential building in the Fordham Heights neighborhood of the Bronx. A boiler room and adjoining apartment doubled as a large-scale drug factory. Three defendants were arrested, including the superintendent of the building, who allegedly provided access to the rooms for pill manufacturing. A total of 6,300 pills, a pill press, dyes, imprints, surgical face masks and other equipment were recovered after building management consented to a search. Agents also seized approximately one pound of heroin and methamphetamine. Prior to the search, two of the defendants were arrested in possession of over 3,000 counterfeit oxycodone and fake ecstasy pills as they prepared to sell the tablets to undercover officers for approximately $25,000.

An illicit pill manufacturing operation pumped out thousands of counterfeit oxycodone pills made from fentanyl and fake ecstasy.

NYC Distribution Networks

Four Arrested Following Overdose Deaths

Two fatal overdoses in Brooklyn and Queens led to the arrest of four New York City narcotics suppliers who trafficked in fentanyl, heroin and cocaine. Police seized over 18 pounds of narcotics, five guns, an expensive sports car and over $600,000 as a result of the investigation. At the outset of the case, a 22-year-old man fatally overdosed in Bay Ridge, Brooklyn in September of 2016. A second fatal overdose involving a 42-year-old male victim occurred in Kew Gardens, Queens in May of 2017 while the investigation was underway. Both deaths were linked to the narcotics distribution group. Alleged ring leader Dionne Sharrow maintained a drug stash location in Bath Beach and lived in a luxury apartment complex in Long Island City. Police recovered approximately $590,000 from his residence and a Lamborghini Huracán from his parking garage.

Approximately $600,000 cash and a Lamborghini were seized from a drug ring linked to overdose deaths.

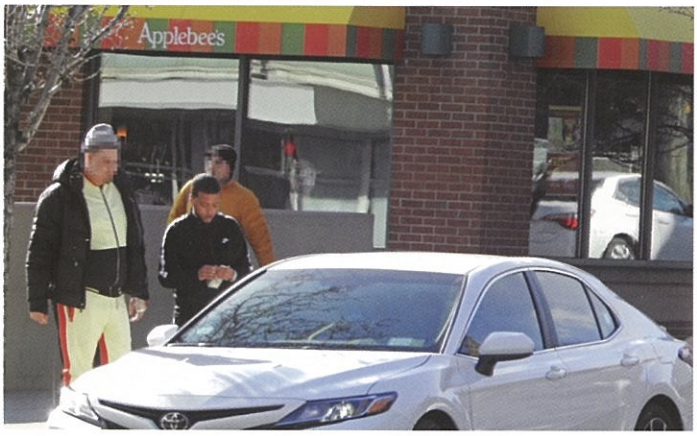
Williamsburg Heroin and Fentanyl Traffickers

Escalating overdose deaths in Williamsburg, Brooklyn sparked an investigation into a street-level heroin and fentanyl trafficking network. Four alleged dealers were indicted for sales to undercover officers. Drugs were stamped with the brand names "Dream Chasers," "Time Out" and "Pacman." This last stamp was associated with a fatal overdose in the area. In one sale, Victor Rovira sold 800 glassines of a heroin and fentanyl mixture on Grand Street, two blocks from the popular music venue the Knitting Factory. Rovira pled guilty and was sentenced to 4 1/2 years in prison for the sale of narcotics. Edward Estrada, a drug supplier, also pled guilty and received a sentence of 3 1/2 years for the sale of narcotics and 1-1/2 to 4-1/2 years for conspiracy.

An overdose death involving fentanyl-laced heroin stamped "Pacman" sparked an investigation in Williamsburg.

Staten Island Probe Leads to Citywide Suppliers

A heroin and fentanyl distribution chain spanning three boroughs was disrupted as a result of an investigation into drug trafficking on Staten Island. Nine defendants were arrested, including a Bronx-based defendant who regularly commuted to his drug trafficking job on Staten Island via the Staten Island Ferry. Court-authorized wiretaps led police to identify mid-level suppliers in the Bronx and high-level suppliers in Manhattan. Eleven sales to undercover officers took place in Staten Island and the Bronx for a total of nearly $24,500. One drug sale occurred at the bar of an Applebee's restaurant in the Bronx in close proximity to a ring member's children.



A drug ring conducted a large narcotics transaction at the bar of an Applebee's restaurant in the Bronx.

Poker and Drug Operations in the Village

An investigation into cocaine and heroin trafficking in the East Village of Manhattan led police to uncover a sophisticated illegal poker ring across town on Sixth Avenue. The wiretap investigation culminated in the arrests of 32 individuals in New York City, Massachusetts, Georgia and Florida. Court authorized searches of several locations yielded $125,000 cash, multiple guns, a

An investigation into intertwined drug and gambling operations resulted in 32 arrests.

kilogram of cocaine (over two pounds) and various quantities of heroin, marijuana and Xanax pills. Police identified a local drug trafficker as the head of the interrelated operations. He partnered with a Georgia-based defendant who oversaw online promotions and recruitment of clientele. The poker house catered to New York City professionals and required a $200-$500 minimum buy in. Proceeds from the illegal gambling operation were used to fund further narcotics trafficking.

"Death" For Sale at Bronx Drug Mill

A drug packaging operation poised to sell 22 kilograms of heroin and fentanyl (50 pounds) under brand names like "Death," "Dexter" and "Heartless" was dismantled in Soundview. The narcotics were destined for New York City and the Northeast. Members of NYDETF recovered the narcotics and drug packaging materials, including over 100 ink stamps with an array of brand names. Four individuals were present when agents conducted a court authorized search of an apartment. A fifth defendant was arrested earlier when agents saw the suspect exit with a shopping bag and hail a livery cab. Agents stopped the car and recovered a kilogram of suspected heroin. The narcotics could have produced a million lethal doses and sold for more than $7.5 million.

A Bronx drug ring touted the dangerous drug mix it produced, using brand names like "Death" and "Heartless."

NYCHA Employee Charged in Drug Sting

A New York City Housing Authority (NYCHA) employee was arrested on drug possession charges as a result of an investigation into alleged drug dealing by her live-in partner, Javier Arroyo. Police recovered 1,800 sleeves of heroin from an apartment at Ingersoll Houses occupied by Michelle Flores, a NYCHA executive secretary. During the investigation, Arroyo allegedly conducted multiple sales of narcotics to an undercover officer and was observed entering the apartment.

Major Traffickers Charged in Drug Delivery Service

A lucrative drug delivery service that sold up to $50,000 in narcotics each week was dismantled following an undercover investigation by the NYPD's Narcotics Borough Brooklyn South. Alleged leaders William Barrous and Emmanuel Batista were charged with Operating as a Major Trafficker. The delivery service was open for business from 11 a.m. to 11 p.m. seven days per week and catered to customers in the Brooklyn neighborhoods of Midwood, Sheepshead Bay, Marine Park and Mill Basin. Drugs sold included heroin, fentanyl, cocaine and prescription pills. Employees of the delivery service worked in shifts with many commuting from Queens. Batista allegedly served as a dispatcher and oversaw daily operations. Two loaded guns, seven kilograms of heroin and cocaine (15 pounds) and nearly $800,000 cash

were recovered from Barrous's residence in a court authorized search. Large amounts of expensive jewelry were seized from both Barrous and Batista.

A drug delivery service catered to customers in Brooklyn seven days per week from 11 a.m. to 11 p.m.

Citywide Cocaine Supply

Upper West Side Cocaine Connection

A rent-controlled apartment served as a hub of drug activity in Manhattan's Upper West Side. Packages of cocaine stamped with a crown imprint were resold to traffickers in Manhattan, the Bronx, Jersey City, N.J. and Pittsburg, Penn. Six individuals sold up to 10 kilograms of cocaine per week (over 22 pounds) for $30,000 per kilogram. The investigation centered on alleged cocaine distributor Gerrado Gonzalez, whose Columbus Avenue apartment had been passed down by his deceased mother. Gonzalez delivered large quantities of cash to a money launderer from Brooklyn in order to conceal his illicit profits. Court authorized searches yielded more than two kilograms of cocaine, methamphetamine and $90,000 in cash. Gonzalez was sentenced to 6 1/2 years in prison on drug possession charges.

Cocaine imprinted with a crown symbol was sold from an Upper West Side apartment.

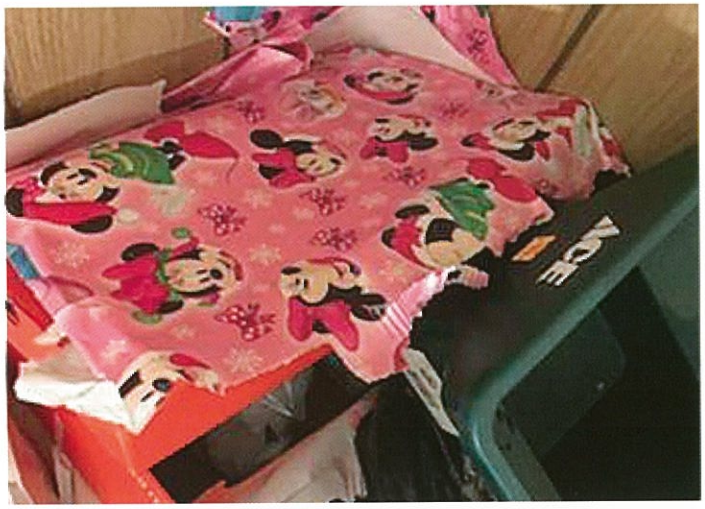
NYPD Officer Sentenced on Drug Charges

Former NYPD officer Jose Sierra was sentenced to three years in prison for drug possession in connection with two sales of cocaine to an undercover SNP investigator. At the time of his arrest in May of 2017, Sierra was assigned to the Housing Bureau Patrol Service Area 7 in the Bronx. He resigned from the NYPD while charges were pending. Sierra and his codefendant, Lina Maria Bedoya Muriel, met with the undercover investigator on two occasions in Long Island City, Queens in a vehicle driven by Sierra. Bedoya Muriel handed packets of narcotics to the undercover in exchange for cash. She was sentenced to a two-year prison term. A court authorized search of defendants' residence yielded additional quantities of cocaine, drug paraphernalia and a gun registered to Sierra.

Minnie Mouse Wrapped Gifts Contained Cocaine

A broad daylight sale of two kilograms of cocaine in front of a Mill Basin, Brooklyn beauty salon led to the arrests of three defendants. Agents and officers observed salon manager Christopher Kelly remove a box covered in pink Minnie Mouse wrapping paper from the trunk of an orange Dodge Challenger and present the package to a

customer. Later that night, the owner of the car, Salvatore Capece, brought Kelly to his home. Kelly carried another gift wrapped box and a Burberry shopping bag. Agents conducted a court authorized search and found Kelly and Capece inside the house. An open box contained two kilograms of cocaine and the Burberry bag had approximately $73,000 inside. A kilo press was inside the car's trunk. The next week, agents stopped Kelly's cocaine customer Robert Woolridge, a bus driver for the Metropolitan Transportation Authority (MTA). Woolridge admitted he had narcotics inside his residence and retrieved a UPS bag containing two kilograms cocaine, which he provided to the agents.



Agents observed drug traffickers boldly sell a package of cocaine wrapped in pink Minnie Mouse paper from a bright orange muscle car.

Methamphetamine Surge

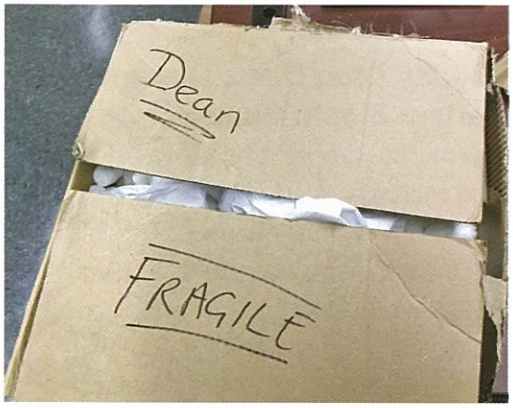
JFK Airport Synthetic Drug Connection

A suspicious package passing through JFK Airport ultimately led to the seizure of a cornucopia of synthetic drugs in Chelsea and Long Island City. After a parcel containing over 5,000 pills of MDMA was intercepted by U.S. Customs and Border Patrol, members of the NYPD's Criminal Enterprise Investigations Section arranged for delivery to a Mail Inc. location in Chelsea, Manhattan. The defendant who picked up the parcel was arrested. The investigation led police to conduct a court authorized search of a room at the Ravel Hotel, a luxury hotel in Long Island City, Queens. One defendant was arrested and police recovered over $31,400 cash, nearly four kilograms of methamphetamine, over eight kilograms of liquid gamma-butyrolactone (GBL), more than 350 MDMA pills and quantities of cocaine, ketamine and Diazepam pills.

Meth Shipped to Apple Store in Grand Central Station

A Los Angeles man was indicted in connection with multiple large-scale shipments of methamphetamine sent from California to the New York area. Richard Dean Desain allegedly sent the shipments via package delivery services and addressed them to various destinations, including the Apple Store at Grand Central Station in Manhattan. An Apple employee opened a FedEx package received by the store in July only to discover it contained what appeared to be drugs. The company contacted the NYPD and officers arrested Desain when he attempted to retrieve the package. Subsequent laboratory analysis determined the package contained over a pound of methamphetamine. A wiretap

investigation linked Desain to a scheme to supply methamphetamine to the New York City area since at least August of 2017. An earlier package containing nearly a pound of methamphetamine was shipped by Desain to a residential address in Jersey City, N.J. in October of 2017 and intercepted at a Newark, N.J. FedEx facility. The Manhattan District Attorney's Office and the Special Narcotics Prosecutor's Office are prosecuting the case jointly.

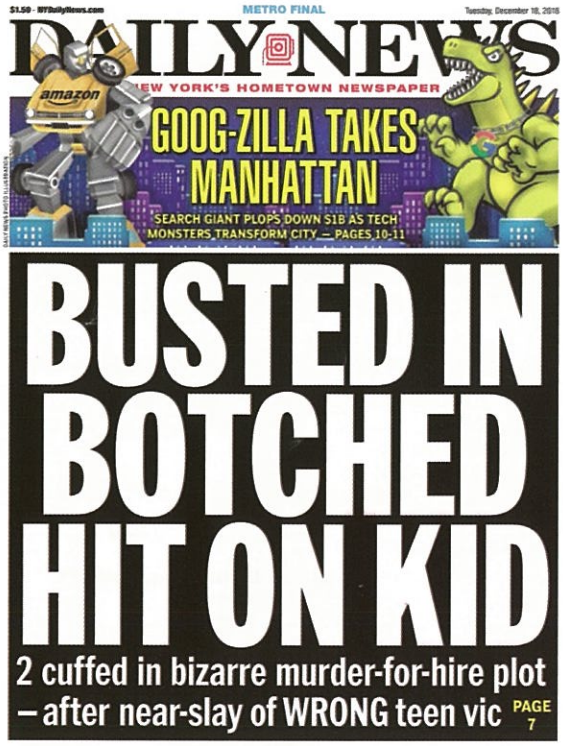


A Los Angeles-based dealer addressed a shipment of methamphetamine to the Apple Store at Grand Central Station.

Drugs and Violence

Thwarted Murder Plot

A wiretap investigation into narcotics trafficking uncovered an imminent murder plot that agents successfully thwarted by arresting two co-conspirators and seizing three firearms. As detailed in an indictment, Francisco Colon and Billy Ayala engaged in phone calls in which they discussed obtaining guns and using a social media account to lure the intended murder victim to a location in Manhattan. Ayala suggested they kidnap an individual known to the intended murder victim. The pair also discussed previous acts of violence, including the murder of one of Colon's family members and a recent near-fatal stabbing in the Bronx. On December 12, 2018, Ayala told Colon that he was going to use the social media account to set up a meeting with the intended murder victim in two days. As a result of the investigation by SNP, the



NY Daily News, December 18, 2018

Manhattan District Attorney's Office and the Drug Enforcement Task Force, Colon and Ayala were arrested on December 13, 2018, at which time Colon was in possession of three loaded firearms.

Drug Trafficking at Brooklyn's Farragut Houses

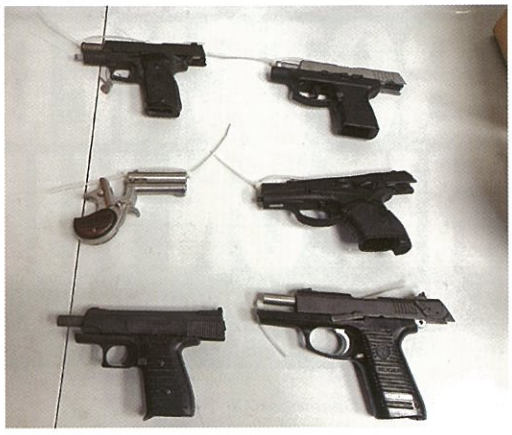
Eleven defendants were arrested for monopolizing public spaces at the Farragut Houses in Fort Greene in order to sell crack cocaine and heroin. Intimidated residents of the New York City Housing Authority development contacted the police about threats of violence and narcotics trafficking taking place in hallways, stairwells and elevators. Although no acts of violence were charged in the indictment, the investigation was sparked by a spike in crime, including multiple shootings. Charges in multiple indictments stem from more than 70 sales of heroin and crack cocaine to undercover officers at the Farragut Houses and in the surrounding area, including nearby businesses.

Eight Charged in Brooklyn Drug Sales: Six Guns

An investigation into narcotics trafficking in the East Flatbush and Bedford-Stuyvesant neighborhoods of Brooklyn led police to arrest eight individuals and seize six guns. Members of loosely connected drug rings conducted over 60 sales of cocaine, crack cocaine and marijuana to undercover NYPD officers for approximately $38,500. One defendant sold cocaine and marijuana to an undercover officer inside his car while his two sons were present in the backseat. Six handguns were recovered in Rosedale, Queens and Flatbush, Brooklyn. A defendant who served as a lynchpin between the different drug rings was sentenced to seven years in prison after pleading guilty to Criminal Sale of a Controlled Substance.

Midday Drug Deals Disrupted on Harlem Block: Guns Seized

Community complaints about persistent drug dealing on West 123rd Street in Harlem resulted in the arrest of eight defendants and the seizure of two guns. The defendants made over 50 sales of cocaine and heroin to an undercover officer with the NYPD's Narcotics Borough Manhattan North over the course of eight months. Congregating drug dealers impeded the ability of passersby, including school children, to safely use the sidewalks. Peak times for drug sales fell between 2 p.m. and 5:30 p.m. At least five schools are located within a three-block radius of the block. Police seized two guns from under the mattress of a defendant who had made 17 sales of heroin and cocaine to the undercover officer.



Six guns were taken off Brooklyn streets during a drug trafficking investigation.

Guns recovered from Harlem drug traffickers.

Alternative Sentencing Bureau

For defendants with substance use disorder, an effective drug treatment program can mean the difference between the ability to lead a productive, law-abiding life and a cycle of relapse, criminal behavior and incarceration. Yet it is not enough to simply treat the physical aspects of addiction. To begin anew, those in recovery require skills gained through academic and vocational training, along with supportive counseling. A pioneer in the field, SNP's Alternative Sentencing Bureau has successfully worked with thousands of individuals over the past three decades to provide the tools needed to achieve and maintain a meaningful and sustained recovery.

Since October 2009, judges are authorized to place defendants in a court-sponsored diversion program. A judge determines which felony offenders qualify for these programs and court staff supervises them. SNP staff offer their expertise in the screening and monitoring of diverted defendants. Eligible candidates are given the opportunity to enter an appropriate program instead of going to prison. Treatment options include long-term residential programs, short-term residential programs or intensive outpatient treatment programs. Upon successful completion, charges may be dismissed.

Through SNP's Drug Treatment Alternatives to Prison (DTAP), which began in the early 1990s and served as a model for subsequent local and state programs, highly experienced staff members evaluate defendants who are likely to reap the benefits of treatment, identify appropriate programs and monitor progress. SNP also refers eligible offenders with co-occurring substance use and mental illness disorders to the Manhattan Mental Health Court to provide integrated substance use and mental health treatment.

DEFENDANTS ENTERING TREATMENT 2005–2018

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Diversion					18	99	68	73	74	71	66	87	77	39
DTAP	169	137	90	114	91	36	7	5	6	1	5	3	2	1
MTC	156	101	81	76	33	17	6	0	0	0	0	0	0	0
Total Treatment	325	238	171	190	142	152	81	78	80	72	71	90	79	40
Indictments/ SCI	2,424	2,178	1,974	1,703	1,595	1,376	1,293	1,373	1,364	1,228	1,200	1,338	1,219	1,141
% Indictments/ SCI diverted	13%	11%	9%	11%	9%	11%	6%	6%	6%	6%	6%	7%	6%	4%

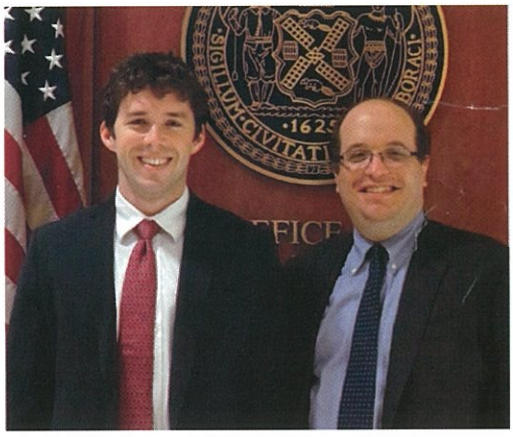
Legal Training Unit

The Legal Training Unit develops and implements the professional training curriculum offered to Assistant District Attorneys. The unit selects speakers, lectures and workshops to address topics that include investigatory and prosecutorial techniques, legal procedures, changes in the law and effective approaches to the prosecution of felony narcotic and related crimes.

In 2018, the Legal Training Unit offered a professional development series and numerous lectures throughout the year to both experienced and new Assistant District Attorneys. Presentations included: Search Warrant Practice in Long Term Cases, Implicit Bias in the Criminal Justice System, Preparing DNA Cases, Ethics of the Visual Trial, Prosecuting Gun Cases, Investigating Cases Involving Cryptocurrencies and the Dark Web, among others.

The training curriculum complies with the regulations and guidelines of the New York State Continuing Legal Education Board. The office has been a New York State CLE Accredited Provider since 2000.

For over a decade, SNP has devoted a portion of its resources to training programs offered to hundreds of local and federal enforcement and criminal justice personnel in New York and other areas of the country. Senior staff members lecture on narcotics investigations and prosecutions at the New York State District Attorneys Association (DAASNY) Summer College, the DAASNY Winter Conference, the New York Prosecutors Training Institute (NYPTI), the New York Police Department's Police Academy, the DEA's New York Drug Enforcement Task Force (DETF), and the New York/New Jersey High Intensity Drug Trafficking Area (HIDTA).



Director of Training Philip Gary (right) and Legal Assistant Thomas Nugent (left).

Melissa Mourges, Manhattan DA's Forensic Sciences/Cold Case Unit Chief, gives a lecture, "Preparing a DNA Case."

NYPD Special Narcotics Prosecutor's Unit

The New York City Police Department (NYPD) has assigned a team of detectives to the office since 1972. The Special Narcotics Prosecutor's Unit, as it is known, is under the command of a senior NYPD lieutenant who serves as a liaison between SNP and the Detective Bureau's Criminal Enterprise Division.

Expert at tracking, safekeeping and presenting electronically recorded evidence, the detectives also provide support on search warrant investigations and maintain citywide repositories for electronically recorded evidence and SNP search warrants.

Search Warrants

The unit prepares search warrants and affidavits and expedites requests through SNP. Detectives keep track of all confiscated evidence and maintain a database on arrests and seizures resulting from the execution of search warrants. The unit also educates new investigators on search warrant procedures. In 2018, the unit processed 1,783 search warrants.

Digital Media Evidence

The unit tracks and controls "chain of custody" for electronic media evidence and makes certain that all audio/video evidence is secure. Additionally, the unit is responsible for the creation and testimony of grand jury/trial wiretap composite recordings and processes digital photographic evidence and data evidence.

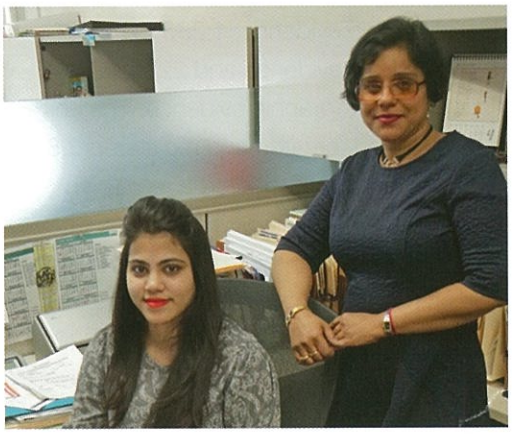
In 2018, the unit registered 1,501 pieces of audio/video evidence, 1,286 pieces of wiretap media evidence and 228 pieces of data and photographic evidence. The unit also prepared, created and registered 3,807 duplicate copies of registered electronic media evidence. Editing of original video evidence to protect the identity of undercover officers and make compilations of original evidence was performed 123 times in 2018.

Members of the NYPD's Special Narcotics Team are assigned by the Detective Bureau's Criminal Enterprise Division.

Support Services Units

Fiscal

All agency fiscal activities, including the production and submission of funding requests to federal, state and city funding agencies, and the monitoring of expenditures, fall under the responsibility of the Fiscal Unit. To that end, the unit assesses and approves purchases and payment vouchers, disbursement of funds such as petty cash and payroll coordination; enforces fiscal policy; conducts internal audits; and reviews and approves agency procurements.



Members of the Fiscal Unit submit funding requests and oversee expenditures.

Human Resources

The Human Resources Unit oversees and implements procedures related to the assignment or transfer of Assistant District Attorneys from the offices of the five county District Attorneys, while also administering the recruitment of managerial, administrative and clerical personnel. The unit is committed to fostering a culture of diversity and inclusion amongst staff and seeks out individuals with a diverse range of backgrounds and experiences. Unit staff participates in planning, developing and executing programs for all employees, as well as in support of recruitment efforts. The unit implements effective human resource policies; adheres to collective bargaining agreements; maintains time and leave records for all employees; and is responsible for bi-weekly payroll distribution. The unit serves as liaison with the citywide payroll management system and adheres to all HR regulatory compliance laws.

Human Resource professionals administer payroll and benefits for agency staff.

Public Information

The Public Information Unit responds to inquiries from members of the media, government agencies, advocacy groups and individuals on the status of cases, joint enforcement efforts, legal decisions, legislative action and citywide narcotics-related trends. Press releases, reports and testimony are prepared and distributed through the unit. The agency's website and social media accounts are also maintained by the unit.

Community Outreach

The Community Outreach Director meets with community and religious leaders, block associations, the New York City Housing Authority and other groups to address local drug problems, while conferring regularly with NYPD officials to devise strategies to combat crime. Once an investigation is completed and a drug organization is removed from a building or neighborhood, resources are devoted toward providing community support services. Additionally, experienced prosecutors offer lectures to schools and youth groups, serve as mock trial coaches and speak at career days.

Information Technologies (IT)

Information Technology develops, establishes and administers SNP's computer networks and telecommunication systems. The unit identifies needs and puts in place systems that effectively merge technology with office processes, and provides a variety of case-related services.

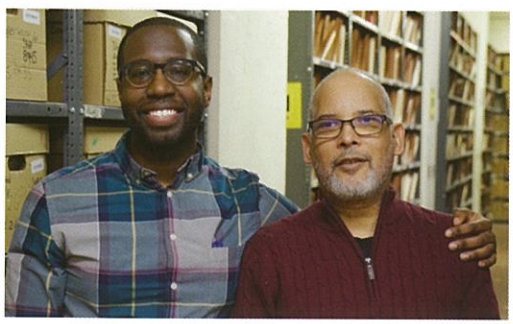
Digital Forensics and Litigation Support: provides pre-trial and in-court technology support, including recovery and examination of evidence from electronic devices, trial exhibit preparation and presentation.

The Digital Forensics Unit assists in gathering evidence for investigators.

Application Development and Support: develops, maintains and supports computer software.

Technical Support: supports staff in using electronic devices, and addresses technical problems and desktop security.

Records Management: files, registers and maintains a record of closed and bench warranted case files and processes parole requests.



Records clerks register and maintain case files.

IT Infrastructure Support: oversees servers, computers, network security, email and data storage and backup maintenance.

IT professionals perform application development and provide infrastructure support.

Case Information: captures and tracks data pertaining to all cases prosecuted by the office, from arrest to disposition. The unit prepares regular reports and ad hoc reports on narcotics activities and performs statistical analysis. Unit staff is assigned to coordinate data capture and provide additional support.

Criminal and Investigative Analysts

Analysts are instrumental to all stages of investigation and prosecution, using the most current technology available to enhance a case from its inception through trial. Evidence from various sources is analyzed, including telephone communication carriers, social media sources, Treasury Department data and prescription drug-related data. Analysts prepare and process subpoenas, provide background searches using public records and law enforcement-specific databases,

Analysts are instrumental to all stages of investigation and prosecution.

prepare investigative reports, and act as points of contact for law enforcement. During the presentation of a case, analysts prepare trial exhibits and testify in the grand jury and at trial.

Trial Preparation Assistants (TPAs)

TPAs support the work of each legal division in the office.

Trial Preparation Assistants (TPAs) are assigned to the Investigations Division, the Trial Division, Part N, and the Alternative Sentencing Division. TPAs track cases, maintain case records and gather reports and legal papers required by Assistant District Attorneys. Additionally, they make arrangements for prisoners to be produced in court and help Assistants prepare for grand jury and trial presentations. Alternative Sentencing Bureau TPAs interview defendants who are diverted to treatment and track their progress. Part N TPAs assist in tracking plea offers, grand jury actions and case dispositions.

Extraditions/Detainers

The unit administers the return of fugitives apprehended or in custody in other jurisdictions and in foreign countries that have extradition treaties with the United States.

Grand Jury Reporters

Grand Jury Reporters record, produce and maintain transcripts of confidential testimony presented before the grand juries.

Interpretation and Translation Services

The unit interprets and translates for non-English speaking witnesses in debriefings with investigators and Assistant District Attorneys, and during testimony before the grand jury; provides written translation and transcription services for evidentiary consent and wiretap recordings that contain dialogue in languages other than English; and provides translation of documents.

Property Release

The Property Release Section is responsible for coordinating with the New York City Police Department and other law enforcement agencies to ensure property that can be legally returned to its rightful owner is returned in a timely manner.

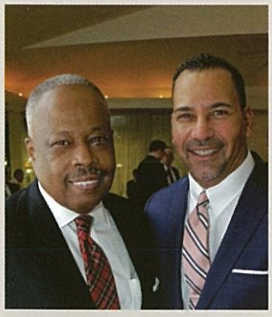
Operations

The Operations Unit is responsible for office maintenance, reproduction of documents, mail delivery, messenger services, housekeeping requests, office supply inventory and disbursement.

The Operations Unit keeps the office running smoothly.

The People of SNP

Holiday Party 2018















Holiday Party 2018














Executive & Legal Staff

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Special Narcotics Prosecutor

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Chief Assistant District Attorney

Joseph J. Tesoriero
Executive Assistant District Attorney
Chief of Investigations

Lisa DePasquale
Chief of the Trial Division
Chief of Alternative Sentencing

Peter M. Kougasian
Counsel to the
Special Narcotics Prosecutor

Thomas G. Van Noy
Administrative Assistant
District Attorney

Paul H. Harvey
Deputy Chief, Trial Division
Deputy Bureau Chief, 40/50

Rhonda Ferdinand
Special Assistant District Attorney
for Drug Prevention and Policy

Kathryn M. Spota
Deputy Chief of Investigations

Steven R. Miller
Deputy Chief, Trial Division
Deputy Bureau Chief, 40/50

Philip Gary
Director of Legal Training

Edward Burns
Bureau Chief, 30/60

Jannine Rowser
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Chief Diversity Officer

Susan N. Lanzatella
Co-Chief, Narcotics Gang Unit

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Senior Supervising Attorney,
Trial Division

Calvin Solomon
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Special Investigations Bureau

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Deputy Chief,
Special Investigations Bureau

Eryck Kratville
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Senior Supervising Attorney,
Special Investigations Bureau

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Special Investigations Bureau

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Investigation Unit

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Investigation Unit

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Grand Jury Reporters Unit

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Rosa Ruales
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Chief Information Officer

Digital Forensics and Litigation/Technical Support

Gregory L. Wilson,
Deputy in Charge

Digital Forensics and Litigation

Jeremy Horowitz
Anthony Lin
Victor Roman
John Slattery

Technical Support

Joseph Cullen, *Supervisor*
Asia Dinkins
Anthony Lin

IT Infrastructure/ Application Development and Support

Christopher Spies,
Deputy in Charge

Application Development and Support

Philip Imperiale

IT Infrastructure Support

Patrick Florestal

Case Information

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Deputy Supervisor
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Taurean Morrell
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Special Investigations Bureau Secretary

Diana Valentin

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Jenilee Briones
Whitley Daniels
Irina Diaz, *TPA/Junior Analyst*
Sonia Hira
Jessamyn Lockard

Investigative Analysts

Leonard Rizzo, *Supervising Investigative Analyst*
Mariella D. Chilmaza,
former Supervising Investigative Analyst
Jacquelyn MacMurray
Leesa Boireau
Tatiana Choong
Jonathan Courtney
Kayla Murray
William Simone
Michael Zummo

Prescription Drug Investigation Unit

Natalie Vitale, *Investigative Assistant*

Forfeiture Investigations Unit

John Polizzotto, *Coordinator*

Investigative and Trial Support Specialist

William Reeves

Narcotics Gang Unit

Christopher Torres, *Trial Preparation Assistant*

INVESTIGATORS UNIT

William Cook, *Chief Investigator*

Investigators Unit Support

Belinda McNeill

NYPD SNP UNIT

Lt. Alfred Vitale
Det. Todd Cracco
Det. Christopher R. Henderson
Det. Jeffrey Lehn

PUBLIC INFORMATION

Kati Cornell, *Director*
Elliott Tran, *Communication and Data Assistant*

TRIAL DIVISION

Trial Preparation Assistants

Philip Lambert, *TPA Coordinator, Trial Bureau Specialist*
Maddalena Coppola, *Supervising TPA*
Rubens Massena
Chanmattie Panlall
Takeisha Sinclair
Olivia Sitbon

Managing & Copy Editor:
Kati Cornell

Editors:
Elliott Tran
Thomas J. Nugent
Thomas G. Van Noy
Craig Jelen

Graphics and Photography:
Elliott Tran
Thomas J. Nugent
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New York State Police

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Vanguard

Office of the Special Narcotics Prosecutor for the City of New York

The Bronx Defenders Redefining public defense

New York City Council
Committee on on Justice System
Hearing re: Preparing for the Implementation of Bail, Speedy Trial, and Discovery Reform
May 22, 2019
Written Testimony of The Bronx Defenders
By Eli Northrup, Associate Special Counsel to the Criminal Defense Practice

Chairman Lancman, my name is Eli Northrup and I am Associate Special Counsel to the Criminal Defense Practice at The Bronx Defenders. The Bronx Defenders ("BxD") has provided innovative, holistic, and client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people in the Bronx for more than 20 years. Our staff of close to 400 represents nearly 28,000 people every year and reaches thousands more through community outreach. The primary goal of our model is to address the underlying issues that drive people into the various legal systems and to mitigate the devastating impact of that involvement, such as deportation, eviction, the loss of employment and public benefits, or family separation and dissolution. Our team-based structure is designed to provide people seamless access to multiple advocates and services to meet their legal and related needs.

New York State has finally passed comprehensive criminal justice reform. As we look forward to its implementation, we must be mindful of the systemic problems that necessitated the passage of this legislation in the first place and ensure that we are moving away from a destructive over-reliance on pretrial incarceration and towards basic fairness and equality in our pretrial justice system.

While discovery and speedy trial reform will transform pretrial practice in the State, our testimony focuses on the implementation of the new bail statute. The Legislature has now acknowledged that the current system of bail perpetuates wealth- and race-based disparities and feeds mass incarceration. With the passage of this reform we have an opportunity to radically rethink how pretrial detention and pretrial release operate. The new statute reflects greater fidelity to the presumption of innocence and makes clear that liberty is to be the norm. Detention should be used sparingly, if at all.

In order to accomplish these goals the City must take the following steps:

- Remove all charge-based eligibility restrictions for pretrial services

- Devote significant resources to alternative to detention programs for people charged with violent felonies
- Adopt a "supportive release" model for pretrial services which provides tangible assistance to people to ensure their return to court.
- Allow defense attorneys to act as gatekeepers for bail calculation interviews
- Expand and fund charitable bail funds
- Fund pre-arraignment services for individuals who receive appearance tickets

These actions are vital in order to create a system that emphasizes decarceration and honors the presumption of innocence and fundamental fairness.

I. What the new bail statute requires

As the Council is aware, the new bail statute mandates that persons charged with most misdemeanors and non-violent felonies be released without bail. The court must release these people on their own recognizance unless it is demonstrated and the court makes an individualized determination that the person poses a risk of flight to avoid prosecution. In such cases, the person must be released with the least restrictive non-monetary conditions that will reasonably assure the person's return to court.

For those who are eligible for pretrial detention, the court may release the person on their own recognizance, set non-monetary release conditions, set bail, or, in some cases, remand the person. When setting bail, the court must consider the client's financial circumstances, ability to post bail without posing an undue hardship, and ability to obtain a secured, unsecured, or partially secured bond. Courts must issue on the record findings to justify their decision-making. Moreover, the court must set at least three forms of bail, one of which must be a partially-secured or unsecured bond, allowing families posting bail to avoid paying a fee to a bail bondsman.

II. Resources for pretrial services must be sharply focused towards the goal of decarceration

Under the new statute, courts will be required to set the least restrictive pretrial conditions necessary that will reasonably ensure an individual's return to court. This requirement evinces a recognition that the primary goal of pretrial services must be decarceration. For too long our clients have been held at Rikers Island or the Boat, isolated from their families and support networks who must navigate multiple buses and long waits to visit them. These are people who have been arrested but can't afford bail--people who are presumed innocent, placed under enormous pressure to plead guilty simply to extricate themselves from these awful conditions. This system tears apart families and communities without promoting justice.

The goal of decarceration necessitates major changes to the current system of pretrial release. Specifically, the Supervised Release program must be transformed by eliminating eligibility restrictions and by shifting the focus from supervision to support. Current services available do not live up to the aims of the new law.

A. The City and the Mayor's Office of Criminal Justice should remove all limitations on eligibility for the Supervised Release program and make it available to all individuals who have been charged

The new bail statute requires that there be non-monetary options for pretrial release in every case. As it currently stands, Supervised Release will not accept individuals charged with the *any* of the crimes that are eligible for money bail under the new regime. This means that if no changes are made, Supervised Release will only be imposed on individuals who are not eligible to be held in jail. It will no longer act an alternative to incarceration--the purpose for which it was created--but instead will serve only to widen the net of individuals under state supervision.

It is critical that pretrial services not simply become a new mechanism of surveillance and control. Programs that mandate drug testing or services are antithetical to the presumption of innocence and due process, and will only serve to further complicate the lives of those accused of crimes. The use of electronic monitoring must be extremely limited. As public defenders we see how the needless imposition of onerous pretrial conditions wears our clients down to the point that they would rather plead guilty than deal with complications visited upon them by the criminal legal system while waiting for a fair trial. The City should guard against this prospect and instead shift pretrial resources towards decarcerating individuals charged with more serious crimes.

As a first step, **the City must eliminate the charge-based restrictions on pretrial services programs**. If Supervised Release is not an option for violent felony offenses, the only condition available will be money bail. Having restrictions on who is eligible for these programs contravenes the purpose of the bill, which requires judges to impose the *least restrictive conditions* necessary to ensure an individuals return to court in all cases, regardless of charge. Having such restrictions in place violates the language of the statute itself.

B. Devote significant resources to alternative to detention programs for people charges with violent felonies

Ensuring that decarceration remains the primary objective of our pretrial justice system, however, will require a reprioritization of the City's resources and fundamental shift in the way we approach people charged with violent offenses. As of Sunday, May 19, 2019, 42% of the Rikers Island population consisted of individuals charged with violent felony offenses.[1] That's 3,229 individuals awaiting trial, the majority of whom are incarcerated simply because they are unable to make bail. Because the new bail law keeps the current system largely in place for people charged with violent felonies, many of these individuals will remain in jail under the new system.

Without a shift in the way that we approach people charged with violent felonies, the City will fall short of its stated goal of significant decarceration and closing Rikers Island. The Council must target pretrial services resources towards this population in order to make a meaningful

[1] *JailVizNYC Dashboard*, The Vera Institute of Justice (https://vera-institute.shinyapps.io/nyc_jail_population/) (accessed May 19, 2019).

shift in pretrial decarceration rates as the legislature intended. The emphasis should be on determining ways to release these individuals under non-monetary conditions.

An example of one such alternative is the Women's Prison Association's "JusticeHome" program, which provides individualized support for women-identified people with justice involvement, including violent felony charges.[2] They meet regularly with clients in their communities to help connect them with resources and realize goals that they've identified for themselves. Support for the creation of similar programs that are able to serve all gender identities could drastically reduce the pre-trial population charged with violent felonies. Moreover, programs which have been proven to actively help clients have credibility with defender offices, who are more likely to recommend them and explain their benefits to clients.

C. Focus pretrial services resources on direct support

New York City has a chance to reimagine the pretrial services regime. **The City should reject pretrials services that focus on supervision and compliance with onerous conditions and, instead, move towards a "Supportive Release" model, with an emphasis on ensuring individuals who are facing criminal charges have the support they need to ensure their return to court.** The best way to do this is to provide tangible supports such as cell phones and access to transportation. These actions have demonstrated positive effects on return to court.

Some of these supports are already built into the new statute, which requires that individuals be given explicit notifications of all court dates in advance, either by text message, telephone call, e-mail, or first class mail. This alone should be sufficient to ensure that the vast majority of individuals are present for their court dates.

Thus, in most cases, the least restrictive conditions that will reasonably ensure a person's return to court are no conditions at all. According to an analysis by the Criminal Justice Agency, in 2017 86% of people released on their own recognizance made all of their scheduled court appearances. The number was even higher for those charged with violent offenses (89%).[3] It's clear that most people will return to court even in the absence of any pretrial obligations.

While many of the proposed legislative changes will take time to implement, the new bail statute does not. District Attorneys offices should begin consenting to release on all offenses for which pre-trial detention is not an option under the new bill. It is a matter of fundamental fairness, and an action they can begin taking tomorrow. The legislature has spoke and these are individuals will not be eligible for detention beginning on January 1. It makes little sense that such individuals be held at Rikers Island in the interim.

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[2] *See* http://www.wpaonline.org/services/alternative-to-incarceration

[3] *Pretrial Release Without Money: New York City 1987-2018*, New York City Criminal Justice Agency, March 2019 (https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=15ad6f0e-b18c-d8d8-ec60-156090d88968&forceDialog=0)

III. Calculating an individual's ability to pay into account when setting money bail

The new bail statute requires judges to take an individual's financial circumstances and ability to post bail without posing undue hardship into account when making bail determinations. To effectively obtain accurate information, defense attorneys should serve as gatekeepers between their clients and the independent organization who conducts the interview.

There is already an effective model for how this can work. The Vera Institute has created a bail calculator questionnaire which it piloted over the last year. Over the course of the pilot, Bronx Defenders attorneys referred clients to representatives from Vera who were present in the arraignment courtrooms. Participation by clients was voluntary and the assessments were done upon the request of a defense attorney. The Vera representative would then meet with our clients and conduct an independent assessment of their ability to pay bail. When the case was arraigned, the representative would be available to make recommendations to the court as to the appropriate type and amount of bail based on their findings. The pilot was effective in conveying meaningful, accurate information to the Court and we recommend that this practice continue, and specifically that **calculations be made at the defense attorneys request.**

It is crucial that this interview take place *after* an individual has been appointed an attorney and has had the opportunity to consult with that attorney about their case, the possible outcomes, and the importance of the bail calculator. While it may seem convenient to incorporate the ability to pay calculator questionnaire into the pre-arraignment interview conducted by the Criminal Justice Agency, this practice would both waste time and lead to inaccurate results. First, it would be inefficient, as it requires a person to answer a number of detailed questions about their employment, family and finances, before a determination that the person is eligible for bail or that the District Attorney's Office is requesting it. Moreover, clients are often confused about the purpose of these questions and the role of the person asking them, and reticent to provide this information. Thus, we recommend that defense attorneys serve as the gatekeeper for the bail calculation interviews. This process has proven to work well for the Supervised Release program interviews and should be adopted in this context as well.

Notably, the results of the Vera Bail Assessment Pilot study emphasize the need for the elimination of charge-based criteria for pretrial services programs. Out of 178 cases assessed in the Bronx, 60% of individuals had no ability to pay bail at all.[4] Of those 178 cases assessed, 99 were felonies. It is clear that many individuals who will still be eligible for money bail under the new statute will not be able to afford it. Pretrial services must be expanded to provide a mechanism for release for these individuals in order to make any real progress in reducing the number of people incarcerated pretrial.

IV. Charitable bail funds must be expanded and funded

The City Council should continue to fund charitable bail funds and push for their expansion. The existence of these funds have demonstrated that individuals return to court regardless of

[4] *Bail Assessment Pilot*, The Vera Institute of Justice, analysis forthcoming

whether they post bail themselves, and they have been an effective tool in decreasing pretrial incarceration rates and eliminating wealth-based detention. However, as the law currently stands, these bail funds can only pay bail on misdemeanor cases up to $2,000. Under the new bill, the majority of misdemeanor charges are not eligible for pretrial detention, making such funds nearly obsolete.

The Bronx Defenders supports the passage of legislation expanding the classes of cases for which charitable bail funds can pay bail. The "Charitable Bail Reform Act" currently pending in the state Legislature (S.00494 (Rivera) / A.06980 (Blake)) would allow bail funds to pay bail in felony cases up to $10,000. The Council should **push for the passage of this legislation and expand funding to the Liberty Fund as a means to pay bail for those who cannot afford it.**

V. The Council should fund pre-arraignment services for individuals who receive appearance tickets

The City should also direct resources to provide services for people before they even reach the court system. Under the new law, most individuals charged with misdemeanors and non-violent felonies must be issued an appearance ticket from the NYPD rather than being arrested and put through the system. Arraignment will be scheduled within 20 days of the issuance of the ticket. In the interim, many of these individuals may seek legal counsel from defender offices. This change will necessitate **increased funding to enable the City's public defenders to effectively represent and advise the large number of potential clients seeking legal assistance prior to arraignments** with the hope of resolving these cases expeditiously.

This period in between ticketing and arraignment is a crucial time in the life of a case and cannot be neglected. Investigation must be conducted as close in time to the initial ticketing as possible so that witnesses can be identified and evidence can be preserved. Effective intervention at this early stage of a case can help save someone from losing their job, effectively navigate complicated immigration consequences, avoid the removal of children, prevent eviction, and avoid having criminal charges filed altogether. Moreover, the quicker a person is connected to counsel the less likely they are to miss their court date and the quicker the case can be resolved, preserving resources down the line.

While over-policing and prosecution remain a serious problem, ensnaring people in the criminal legal system who should never be there in the first place, there are steps the City can take to ameliorate this harm. One would be to **fund and expand pre-arraignment diversion programs such as Project Reset to include serious felony cases,** provided that there are strict procedural protections in place to uphold the constitutional rights of those who choose to participate. These programs provide an effective alternative to the traditional method of prosecution, while serving to shrink the footprint of the criminal legal system. The more cases that can be diverted or resolved prior to arraignment, the better off our clients and community will be.

VI. Conclusion

With change comes opportunity. The time has come to radically transform our system of pretrial release and drastically reduce the number of people who are held at Rikers Island awaiting trial. The Council should continue to lead the way on criminal justice reform and take the aforementioned steps to ensure that the promise of the criminal justice reform legislation is actually realized in its implementation.

Thank you for your consideration.

Office of the District Attorney, Bronx County

City Council Testimony
Committee on the Justice System
Hearing: Preparing for the Implementation of Bail, Speedy Trial and Discovery Reform

May 22, 2019

Pursuing Justice with Integrity

Darcel D. Clark

District Attorney

Good afternoon,

Thank you to Chairman Lancman and the Justice System Committee for providing me with another opportunity to speak here.

I return to you today to reiterate some of my budget requests, in light of the new Criminal Justice Reforms that will become law in New York State in January.

Even before this legislation was conceived, I had been working since I became Bronx District Attorney in 2016 to bring cases to trial more quickly, reduce bail requests and provide early discovery in misdemeanor cases.

I am proud to have played a part in these reforms, in that I provided some insight to lawmakers.

I and my fellow DAs did beseech the legislature to proceed with caution concerning some aspects of the reforms that affect public safety.

Regarding discovery, we believe that prosecutors should be obligated to disclose materials in their possession as soon as possible if the disclosure of these materials would not put a victim or witness at risk.

But prosecutors should not be required to disclose the addresses or other personal contact information of victims and witnesses without their consent.

We believe we should end cash bail. But there must be a meaningful detention option for those who pose a physical safety threat to others.

We voiced our concerns to the governor.

We did not get everything we hoped for in the new law.

But we are moving forward on implementing the reforms.

The funding request I made to this committee in March to help update our antiquated computer system, for witness security and for resources to handle enormous amounts of body-worn camera footage, has become more vital in the wake of the passage of criminal justice reform bill.

Specifically because, according to the new law, all discovery must be provided within 15 calendar days of arraignment.

We need cutting-edge technology—a new case management system to ensure accountability, improve transparency and provide efficiency, and technology to provide documents and videos and other Discovery quickly.

The new case management systems that we have researched can provide great sharing capability between my office, law enforcement, the defense bar, the courts, City Council and MOCJ. I recently met with new NYPD Deputy Commissioner for Legal Matters Earnest Hart, and we agreed this is crucial because my Office will be the custodian of all police paperwork and BWC footage.

A state of the art system will allow us to accurately track cases and individuals. Currently we have no way to file electronic discovery, and our storage and email systems are overwhelmed.

(Capital request of $2m for new system, $650k for maintenance)

Requiring ADAs to turn over discovery documents early will allow the defendant to learn the identities of witnesses and where they work or live.

Disclosing witness information will mean we will seek protective orders in many more cases than we currently do. This will result in more hearings, and significantly more man-hours redacting documents and videos.

It also means we need enhanced security, along with compassion and support for our victims and witnesses so they will feel confident when they courageously agree to testify or cooperate in a prosecution.

Last year, I implemented a witness security program to help respond to this changing landscape and enhance services for victims and witnesses.

Witnesses, victims and family members who were intimidated, and cooperators in cases, were assisted in relocation to temporary and/or permanent housing and required other expenses.

So I would like to renew our request for funding for 10 Detective Investigators ($610,000) to provide witness security for those who are under threat.

The statute actually prohibits the taking of pleas if discovery has not been turned over. We anticipate needing staff in the complaint room to copy and redact whatever discovery is available at the complaint room phase (61s, photos, vouchers, etc.) for an initial turn over.

Subsequent to the complaint room phase we will require personnel to more quickly retrieve and download surveillance footage, make redactions to Body Worn Camera footage and other surveillance, and redact paper discovery.

TPA's will also be in constant contact with local precincts, the Lab for narcotics, ballistics Lab, Medical Examiner's Office (DNA, etc.) and hospitals to secure, copy, redact and turnover key relevant discovery within the window set by the statute.

We are estimating as many as 25 additional TPAs who will serve as "Discovery Expediters."

Ending Cash Bail

I suggest the City provide more funding for Pretrial services for those defendants who will remain at liberty but need resources between Arraignment and trial. For example, supervised release, drug treatment, mental health services, housing, and public transportation to and from court.

Also, we will have to depend on NYPD Warrant Officers to find the defendants who are ROR but may not return voluntarily, which will increase the workload for the police.

In conclusion, no matter how willing we are to carry out these reforms, we will not be able to do it without some additional resources.

After we have come this far to change the system, to make it fairer for everyone who must be a part of it, we cannot let money stand in the way of correctly, carefully and efficiently implementing reforms whose effect will be immeasurable and priceless.

Summary of Critical Asks

25 DAT Writers/TPAs $1,069,975

10 Detective Investigators.....$610,000

Case Management System.....$2.5 million

TOTAL

$4,099,975

Eric Gonzalez
District Attorney

Testimony of Brooklyn District Attorney Eric Gonzalez
Before the New York City Council Committee on the Justice System

"Preparing for the Implementation of Bail, Speedy Trial, and Discovery Reform"
May 22, 2019

Good afternoon. Thank you Chairman Lancman and members of the Committee on the Justice System for the opportunity to testify regarding my Office's implementation of the new bail, speedy trial, and discovery laws. This will no doubt be a huge undertaking for the city's district attorneys and the court system, and we will need significant additional resources if we are to implement these laws effectively, and in a way that meets our collective goal of increasing fairness while keeping the public safe. I appreciate the City Council's continuing support of our work, and the thoughtfulness with which you approach these issues.

I will begin with the new discovery and speedy trial laws. My Office has long practiced open file discovery in the vast majority of cases, which in addition to being fairer to the defendant, can also accelerate dispositions of cases and reduce backlog. I believe this is fair and just, and I supported legislative reform measures that mirror our current practice. However, I also made clear my concern that any new legislation must provide meaningful protection for victims and witnesses, and not create a chilling effect on their willingness to testify in prosecutions.

If you speak to any Assistant District Attorney, they will tell you that one of the first questions they are asked by victims and witnesses is: "Will the defendant know who I am?"

"Will they know where I live?" Currently we are able to reassure victims and witnesses that their personal contact information will not be divulged to the defendant.

The new discovery law requires us to turn over, within 15 days of a defendant's arraignment, the names and "adequate contact information" of anyone – not just witnesses testifying at trial – who has information that may be relevant to the case. As you can imagine, for a victim of a crime or a witness, being pulled into a criminal matter is anxiety-provoking at best, and at worst can be terrifying, even in non-violent cases.

In fairness, I do understand the defense's need to speak to witnesses in cases that are going to trial, and I believe that it can be appropriately balanced with witnesses' safety and right to privacy without their addresses, phone numbers, or other personal identifying information being turned over to the defense without their consent. We need a secure online portal through which the defense may contact witnesses in a manner that does not reveal their personal identifying information. This technology is currently available and could be used by all the DA's offices in the city, but resources are needed to create and maintain the system.

In addition to victim and witness safety, I am concerned about the discovery law's timing requirements and how it will affect the day-to-day operations of my Office. The new law requires us to turn over to the defense the majority of discoverable materials within 15 days after arraignment in all cases.

As I noted earlier, the Brooklyn DA's Office has practiced early and open discovery for many years. Our policy is to turn over what we have, when we have it, and to have a continuing obligation to obtain and disclose additional material as it becomes available. Our ADAs are trained in the practice of early discovery, but "early" in our current practice—while it is well before trial—is not within 15 days after criminal court arraignment. Typically, in felony cases, it

is after a judge finds the grand jury presentation to be sufficient, and in non-felony cases, it is after the complaint has been converted to a corroborated charging document.

Under the new law, we will be required to provide discovery in felony cases that we end up dismissing rather than putting in the grand jury, or where the grand jury chooses not to indict, in misdemeanor cases that we end up dismissing before we convert it to an Information, and in cases where the defendant accepts a plea offer at an early stage. This means that we will be required to provide discovery in *thousands* more cases than we currently do under our existing practice, so we know we will need many more ADAs if we are to meet the onerous requirements of the new law.

In addition to legal staff, we will need trial prep assistants, paralegals, and messengers to track down paperwork and lab results from the NYPD, OCME, hospitals, and other third parties; more tech experts to download, process, and review hundreds of hours of electronic recordings, including police body-worn camera footage; and more investigators and analysts to review documents and other materials. With additional staff comes the need for more physical space in our building, and more computers and other supplies so that the new employees can do their jobs.

Improving our technology infrastructure and capabilities will also play an essential role. Securing, tracking, and turning over discovery material in the volume contemplated by the new laws will necessarily require additional tech capacity, both software and hardware.

These additional staffing and technology needs are absolutely critical to my Office's ability to comply with the new discovery and speedy trial laws. The consequences of noncompliance are cases getting dismissed, defendants not being held accountable, and victims not receiving justice. All of these critical needs will require significant funding. Without

additional resources, I fear that despite our best efforts, we will be unable to fully comply with the new requirements.

Regarding the new bail statute: I supported reform because I believe that whether someone is in jail pending trial should not be based on how much money they have. And as with discovery, one of my top priorities in implementing the new bail law is to ensure the safety of victims and witnesses, and the public at large. Unfortunately, the legislation does not allow the court to consider physical threats to public safety when setting bail, including in many domestic violence cases, even though they often pose the most serious safety concerns to victims.

It is imperative that programming be developed and funded to deal with the defendants in these cases and the threats they pose to their victims. Currently, defendants in domestic violence cases are not eligible for Supervised Release, and those providers do not have appropriate programming for defendants in DV cases. So there is literally no place we can refer the defendants who will now be released on their own recognizance on every case, no matter their history of domestic violence, escalation of their threatening behavior, the fact that they choked the victim, or any other of the factors that we know indicate an increased likelihood that the defendant will kill the victim, and which we now use in determining whether to ask a judge to set bail in these cases. I cannot emphasize enough how critical it is to the safety of these victims that appropriate and meaningful pre-trial programming be developed for defendants in these cases.

Another issue that we have to grapple with under the new bail statute is that after January 1st, we will no longer be able to ask the court to set bail or order the pretrial detention of defendants charged with sophisticated high-dollar value financial frauds – even if the defendant is a foreign national accused of defrauding or stealing from thousands of victims, and even if they demonstrate their willingness and capacity to flee the jurisdiction.

For example, we currently have a multi-defendant, multi-million-dollar Medicaid and Medicare fraud case pending. The lead defendant, a Russian national, faces 25 years in prison and is currently being held in on remand to secure her appearance in court on the charges. If we get another case like this after January 1st, we will have no ability to ask a court to detain this person pre-trial. So we will have to fashion other means of making sure the defendant does not flee. These defendants are not served by the current Supervised Release programs, so these will need to be developed and funded, and we will likely need to rely on electronic monitoring to be able to keep tabs on these defendants.

Electronic monitoring is very expensive and currently we have no capacity in this regard – we simply don't use it except in a handful of cases involving at-risk youth. The new statute requires that if electronic monitoring is used, the provider must be a government or non-profit entity. This entity will have to be found or created and of course, funded. As with all other conditions of release, the costs of electronic monitoring may not be imposed on the defendant - even wealthy defendants. While legislators supporting the bail law frequently point to electronic monitoring as an available tool, it is not currently routinely available, and they did not provide any funding to pay for it.

As I mentioned earlier, I was in support of bail and discovery reform and I continue to support reform, so my intention is to bring my office into compliance with these new requirements sooner than the new laws require. But I will be unable to do so unless resources are forthcoming to deal with the serious concerns I have raised today.

At this point, I have to express my frustration. As you know, the mayor's budget came out last month, and once again we have not been given the resources we have been requesting for the past several budget cycles. None of our requests was excessive. All were for necessities,

including a lease on the building my 1100-person staff works in, and a warehouse that the city has directed us to move our files to, not to mention the staff we need move to vertical prosecution, as every other DA's office in the city has already done.

So coming here and telling you about the resources we are going to need to comply with these new laws feels like an exercise in futility. But I am here, as are my colleagues from the other DAs offices, to tell you that these reforms will not succeed if the resources are not provided.

I believe strongly in criminal justice reform. I believe that historically we have locked up too many people, for too long, and our system needed a correction. Having said that, we must also understand that creating a more just system costs money.

I thank you again for the opportunity to discuss these issues and for your partnership in criminal justice reform, and I ask for your support in securing funding so that we can effectively implement these important and necessary reforms.

New York County District Attorney's Office

Testimony of Cyrus R. Vance Jr., New York County District Attorney

New York City Council Committee on the Justice System

Oversight Hearing on

"Preparing for the Implementation of Bail, Speedy Trial, and Discovery Reform"

Good afternoon, Chairman Lancman and members of the committee. You are hosting what we believe is the first public hearing on this significant criminal justice legislation, albeit after the proposals became law.

Thank you for having this hearing on what it will take to prepare for the implementation of the Criminal Justice Reforms. It is important to have this discussion to adequately prepare for the sweeping changes that will take effect January 1st. I hope today is the just the start of the conversation.

By way of context and background, let me remind everyone that we are living in a time of record-low crime in New York City. Murders are down more than 50 percent since 2010, and down about 90 percent since the 1980s. At the same time, New York's incarceration rate has also decreased significantly, demonstrating that being smart on crime is better for everyone in the long run than merely being tough on crime. It is because of this success – in bringing down violent crime while simultaneously significantly reducing the number of individuals incarcerated – that we are able to take this moment in history to now address long-needed criminal justice reform.

Smart criminal justice reform can bring incarceration rates down even lower, but we must not cede the gains we have made in driving down crime – especially violent crime.

Since 2010, when progressive policies were still derided as being "soft on crime," the Manhattan District Attorney's Office made criminal justice reform and eliminating unnecessary incarceration among our highest priorities. In that effort, we have drastically reduced the number of prosecutions for low-level offenses in Manhattan. Last year, we arraigned approximately 42,000 misdemeanors and violations combined, a 51-percent reduction from the 85,615 misdemeanor and violations we arraigned in 2010. That is more than FORTY THOUSAND fewer cases coming through our doors each year, a vast reduction of the criminal justice footprint we are leaving on society.

Through innovative programs such as Project Reset and Manhattan HOPE and through our office's formation of a special unit devoted solely to alternatives to incarceration, we estimate that 4,000 more cases will be diverted from the system in 2019. We are proud that New York City has the lowest incarceration rate and the lowest crime rate of any big city in America.

I am testifying before you today to discuss the recently passed criminal justice reform legislation and how it will impact the work that prosecutors do. Many of the reforms will require immense restructuring of DA's offices all over the state and will require significant logistical changes as well as increases in resources. Unfortunately, as you have heard, the lawmakers did not provide any funding for the new mandates. This was a missed opportunity to transform New York's criminal justice system into a national model. Without adequate funding, the patchwork of reforms simply will not be as successful as they were intended to be.

Each of you represents constituents who care about the fairness of the justice system and also about public safety, and we have begun meeting with the City to determine what new resources are necessary to successfully implement these reforms and protect those constituent priorities. Although I have more questions than I do answers today, what we do know is that we will need additional personnel resources including more ADAs and support staff as well as technological resources to meet these new demands. In these remarks, I will address two areas of the new legislation that necessitate these additional resources: Bail and Discovery.

Starting with bail, prior to the new legislation, New York law allowed for judges to make cash bail determinations pre-trial, and that practice was widely criticized as creating a racist, classist criminal justice system. Indeed, it is our belief at the Manhattan District Attorney's Office that prior actions and charged crimes, not bank accounts, should be among the factors considered by judges when determining pre-trial detention. As such, we supported ending cash bail and passing a law that would instead allow prosecutors to ask for pre-trial detention in a limited number of cases – cases where the defendant was a threat to public safety. This was a position supported not only by our office, but by our colleagues in Brooklyn, the Bronx, Queens, Nassau, Suffolk and Westchester Counties, among others, as well, in addition to being supported by respected criminal justice think tanks like the Vera Institute of Justice. And, in fact, it should be noted that 48 of the 50 states and the Federal Government allow judges to consider risk of danger to the community when determining whether an individual should be detained. We are one of two states that does not allow this – in New York, only a defendant's risk of flight can be used to weigh detention decisions.

And yet, instead of ending cash bail, the Legislature passed a bill that continues cash bail, but only for certain charges. And, even for defendants who have committed an offense that qualifies for bail or detention, judges still may not consider the defendant's risk of danger to the community, rather, they may only consider the defendant's risk of flight or of not returning to court. For defendants who commit crimes that are not "qualifying offenses" for bail or detention, on the other hand, nothing about the case or the character of the defendant can allow prosecutors to move for detention – not even the defendant's risk of flight. And, because the legislation excluded financial and cybercrimes from the list of qualifying offenses, for some of our most serious flight risks – white-collar defendants and sophisticated cybercriminals who have the means and finances to flee – we have no mechanism to request that they be detained. Rather, they will simply be automatically released, which, of course, provides them the opportunity to cover up additional crimes that law enforcement has yet to discover.

As noted, for defendants who do commit qualifying offenses, a judge cannot determine bail or detention based on the defendant's risk of danger to the community. That means judges cannot consider how the defendant's criminal history or the details of the defendant's current crime

increase the risk of harm the defendant could cause to the public if released. Instead, judges may only consider those – and all other – factors as they pertain to the defendant's likelihood to return to court. I believe that most New Yorkers do not know that judges cannot consider the defendant's risk of harm to the community when determining bail. But I think they care about the law forcing courts to release repeat or dangerous defendants into their communities with little more than an admonition to not commit any crimes while awaiting trial. Residents care whether a serial sex offender is automatically released because he's not a demonstrable flight risk. They care whether someone who skillfully breaks into apartments is released the second, third, or tenth time someone awakes to find him in their home. They care whether the person selling narcotics on the street corner during a worldwide opioid epidemic will continue to peddle their poison in the neighborhood because of this new law. They care whether the cybercriminal who preyed on immigrants or the elderly is released and allowed to go right back to the same computer from which he put the scheme into motion. They care whether someone who is a known, proven risk to the safety of their community can be treated as such by the courts.

But, under this new law, courts cannot consider the risk those defendants pose to the community, and, in many instances, they do just have to release them right back into those communities. If a defendant is not arrested on a qualifying offense, he must be released. Period. This law wrests all discretion from judges.

And, although the legislation allows the court to order release with non-monetary conditions in some instances, it does not provide any resources for the court to be able to do so. New York's current supervised release program is designed for individuals who may not need more than reminders through text or phone calls to return to court. But many of the individuals who will now be released to our communities will require much greater supports to be at liberty, successfully make all their court appearances, and not reoffend. That is why we are currently in discussions with the City about how we can create such systemic supports. To give you an estimate as to the scale of what we are talking about, The Vera Institute of Justice, which has studied this issue extensively, estimates it will cost $75 million a year to roll-out pre-trial services and supervised release across the state.

Funding those programs will be vital, especially considering the types of cases for which the new law requires courts to release defendants prior to trial – which include residential burglaries and aided robberies. In fact, our office has a recent burglary case that gets to the core of this issue. Of course, every time we talk about cases we currently have which will be affected by the new law, we are accused of fear-mongering. But that is not our intention. Rather, we are showing you how we came to our own conclusions about the bill – by looking at the cases we have and seeing how they would be affected.

In the recent burglary case I mentioned, the defendant is a mandatory persistent violent felon – in laypersons' terms, this means that he is facing life imprisonment due to his history of felony convictions. In 2001, he pled guilty to three residential burglaries. In 2011, he pled guilty again, this time to four residential burglaries in Chinatown, and was identified in nine more. This defendant then served six years in state prison and had barely been out for a year when, in 2017, he returned to Chinatown and victimized the same community in the same way. In October and November of that year, the defendant entered the homes of seven families while they were sleeping and stole items from their bedrooms. Law enforcement was able to identify him by the fingerprints he left at the scene and arrest him a little over a week later while he was walking on Madison Street underneath the Manhattan Bridge, just steps away from buildings he had recently burglarized.

Even though the minimum sentence he could receive would be 16 years to life if convicted of the latest charges, under the new law, a judge would not be permitted to set bail or detain him because, inexplicably, our state lawmakers excluded residential burglaries from the list of bail eligible offenses. So, despite being categorized by the legislature as a mandatory persistent violent felon and being proven to be a danger to the safety of his community, he would be released right back into that community.

It's not only street crime that concerns us. Last month, my Office's Cybercrime and Identity Theft Bureau announced the takedown of a major darkweb organization, "Sinmed" – one of the largest illegal drug vendors on Dream Market, a dark web bazaar. The proprietors of Sinmed sold and shipped hundreds of thousands of counterfeit Xanax tablets and other controlled substances to buyers in all 50 states and laundered more than $2.3 million in cryptocurrency

proceeds. During the takedown of this case, law enforcement seized the largest quantity of pills in New Jersey State history, including approximately 600,000 counterfeit Xanax tablets, as well as approximately 500 glassine bags of fentanyl-laced heroin, and large quantities of methamphetamine, ketamine, gamma hydroxybutyric acid (GHB), and more. Simply put, the drugs being sold, particularly those laced with fentanyl, had the potential to kill a significant number of people. Under current law, the court can protect the community by holding these dangerous individuals in pretrial detention, but, when the new legislation goes into effect on January 1, 2020, our courts and prosecutors will lose the ability to do anything other than watch those defendants walk away and head back to their criminal enterprises, because none of the charges they face were designated by lawmakers as qualifying offenses, despite their deadly consequences.

As this case demonstrates, defendants in large-scale white-collar cases – who commit crimes that require sometimes years of investigation and that wreak havoc on the lives of their victims, particularly those in vulnerable communities – will never be detained. In other words, this legislation essentially hands white collar criminals a get out of jail free card. And, of course, the natural yet undoubtedly unintended consequence of that is that the new legislation will inevitably increase the racial and socioeconomic disparity in our jail population.

In addition to the issues we will face with local defendants, the legislation will impede our ability to prosecute cybercriminals from all over the world. Often, the masterminds of sophisticated malware and business email compromise schemes and the leaders of online forums for selling personal identifying information and other sensitive data are not located in New York, or even the United States. But our system enables us to hold them accountable for violating New York law. This often involves an arrest in a foreign jurisdiction and extradition to New York. Under the new law, no matter if the person caused thousands or even millions of dollars of damage and regardless of how difficult it may have been to arrest and detain the individual in a foreign jurisdiction, we cannot ask for pretrial detention because the crime does not qualify for bail or detention under the new law. We will bring them across oceans to face charges, only to watch them immediately leave the courthouse because their crimes are not deemed "qualifying offenses."

Critically, too, the new law is unclear as to whether a defendant found guilty of a serious but non-qualifying offense can be detained while awaiting sentence. For example, the burglar I mentioned earlier is now facing 16 years to life if convicted – are we comfortable letting a violent predicate felon now guilty of terrorizing multiple families in a single community remain at liberty until his sentencing hearing, which usually takes place weeks after the jury has rendered a guilty verdict? Are we comfortable even believing that that individual will return to court for sentencing once the jury has rendered that guilty verdict? Surely, the Legislature and Governor could not have intended to mandate that *convicted* defendants walk out of court free until sentencing, but that is a possible interpretation of the new law.

To the issue of funding as it relates to changes in our bail statute, to achieve reduced incarceration, supervised release and pre-trial services will be scaled up across the state. The City will have to invest considerably in building pretrial services capacity to manage the number of defendants that will be at liberty during the pendency of their case with non-monetary conditions set by the court. Because, although the legislature had the foresight to require the creation of a pretrial services agency – a cornerstone of any jurisdiction that has eliminated cash bail – it failed to appropriate any resources to do so, creating a major statewide unfunded mandate, a considerable shortcoming of this reform effort.

My office is proud to have seeded $13.7 million in asset forfeiture funds for the expansion of the current Supervised Release program across the city. The Mayor's Office of Criminal Justice has administered that program with much success. 89 percent of defendants released into that program return to court for all their appearances and 92 percent are not rearrested for a felony pretrial. Despite the success of this program, it is not sufficient in its scope or scale to manage the influx of cases that will be released with non-monetary conditions.

In Manhattan, for example, of the 9,459 cases where bail was set last year, we estimate that the defendants in 6,735 (or 71 percent) of those cases would be released under the new law because they did not commit what the Legislature determined is a "qualifying offense." The remaining 2,724 (29 percent) of those defendants – those who did commit qualifying offenses – would be eligible for bail or detention. A considerable proportion of cases in both categories – mandatory release and

qualifying offenses – will have non-monetary conditions set by the court, and there needs to be capacity to appropriately supervise these defendants. Last year, there were 1,040 defendants placed on Supervised Release in Manhattan – it's likely that number will increase **five-fold** or more come January because of the large number of cases that will fall under mandatory release.

The American Bar Association and the National Association of Pretrial Services Agency have established best practices for pretrial supervision and indicate that a pretrial service agency should:

- Monitor defendants and promptly notify the court, as necessary, of potential violations of conditions of release, as well as provide recommendations about the consequences of violations;
- Provide reminders and other necessary assistance to ensure defendants appear for court dates; and
- Support defendants to obtain employment as well as any services (e.g., mental health or substance use disorder treatment, legal services), that may increase their ability to comply successfully with conditions of release.

Research shows that matching supervision levels to risk and need greatly improves supervision compliance and outcomes.[1] In this context, services and supervision should be provided in proportion to an individual's risk of failure to appear, with lower-risk defendants receiving less intensive interventions than higher-risk defendants.

The new statute also contemplates electronic monitoring, and state-of-the-art technology will be needed to ensure effective implementation. As the Brookings Institution has concluded, phone apps with voice and facial recognition technology may create a more flexible interface than an ankle or wrist device alone, and can provide new ways for pretrial service agencies to check-in with users, connect them to resources, and offer reinforcement for making court dates and other terms of release.[2] This form of supervision, however, will only be as effective as the court's ability to oversee it; it is necessary that the technology be able to swiftly and accurately report

[1] http://criminology.fsu.edu/wp-content/uploads/volume-10-issue-41.pdf#page=107 http://doi.org/10.1177/0093854890017001004

[2] https://www.brookings.edu/blog/techtank/2017/09/21/decades-later-electronic-monitoring-of-offenders-is-still-prone-to-failure/

back to the court regarding a defendant's compliance and whereabouts. This requires manpower, in addition to equipment and technology – all of which are costly.

As noted, the Vera Institute of Justice estimates that it will cost $75 million a year to rollout pre-trial services across the state. New Jersey spent $62 million on pretrial services last year and supervised 33,741 cases. Likewise, Washington D.C. has an operating budget of $62 million and supervises 16,000 cases per year. New York City will have to invest considerably in developing this capacity, because, without the support of the Legislature and the Governor, that burden falls on the Council and the Administration. We are here today asking that you join your national partners in supporting your local constituents by investing in these tools that will ensure successful implementation of the new law and protect community safety.

Turning to discovery rules. Since 2009, I have advocated for the Legislature to reform New York's discovery rules, and I have significantly opened discovery practices in our Office. To implement the new reforms – in our office and across the state – the state or cities must allocate resources to this endeavor that will allow for significant personnel and technology increases. In addition to necessitating additional resources for prosecutor's offices, the legislation necessarily requires additional resources for the NYPD, so that we can work together to meet our discovery obligations.

Here is why: for most cases, the new legislation requires us to turn over discovery materials to the defendant – including the names of victims and witnesses – within 15 days. Of course, that does not capture the full scope of what will be required, because the new law expands discovery by requiring the People to turn over, in that same short timeframe, a host of additional materials. A typical case in 2020 may encompass thousands of text messages, medical records including x-rays or other imaging, insurance records, financial records, historical cell site data, search warrants for computers and cell phones, photographs, hours of surveillance videos from private business or NYPD units, transcripts of various proceedings, recordings from NYPD body cameras, and many other sources of evidence.

Importantly, the new discovery requirements apply to all cases, including those resolved by pleas, unless the defense waives. Currently, more than 97 percent of cases are resolved by guilty pleas,

often to the benefit of defendants, and those cases do not require full discovery. Being mandated now, however, to provide such a significant quantity of information in most cases will significantly burden DA's Offices across the state, and, in fact, will do so with an incredible amount of potentially unnecessary document production. In Manhattan alone, we estimate that these changes will require what amounts to full trial discovery on approximately 25,000 additional cases annually.

In short, the legislation not only impacts the timing of discovery and extends discovery obligations to cases resolved by guilty pleas, but it also significantly expands the scope of discovery, which is why every single DA's office will ultimately need additional resources, regardless of what their prior discovery practices were.

Despite not allocating any resources to this reform, the legislation does include significant sanctions for failing to comply with the new discovery obligations – yet another reason why funding is so crucial. We are not yet ready to give the specific budget number that will be required to implement these new mandates. But we do know that it will be substantial – we aren't talking about needing quarters for the copier, we are talking about needing to create essentially a full-scale high-tech reproduction unit – a unit that at present does not exist and for which no funds have been allocated. Prosecutors will also require funds for personnel dedicated to a litigation support unit (more analysts, paralegals, and lawyers) just to acquire, process, and disseminate the materials. We will also need additional ADAs and analysts to review the materials.

Complying with the new discovery laws isn't simply about resources. We must also ensure witness safety and the cooperation of witnesses. The new discovery statute mandates that the District Attorney provide the name and adequate contact information for all persons who have information relevant to any charge, within 15 days of the defendant's first appearance in criminal court. As indicated, currently less than 3 percent of cases go to trial, so, historically, the identities and statements of victims and witnesses have been protected from disclosure. Now, having to hand defendants a roster of who has spoken out against them just fifteen days after their first appearance, absent a protective order, is a seismic change that undoubtedly will dissuade witnesses who live in all neighborhoods from reporting crime or agreeing to testify as witnesses. Indeed,

even now, we have seen that witness intimidation is a very real concern when cases go to trial. Take, for example, our office's prosecution of James Seabrook, a case that the New York Times recently cited. In that case, the defendant's attorney allowed the defendant's sister to take pictures of documents that contained witness information, and she texted those pictures to other people. At trial, the witness declined to testify, and the jury deadlocked on second-degree murder. This new law significantly increases the number of cases in which this type of witness intimidation is possible. That is the biggest concern that I have about this legislation – we can execute the logistics, if there is a solution to funding. But we cannot prosecute violent crime without witnesses. Period.

Of course, this witness safety concern also raises additional logistical concerns. For example, it is unthinkable that the prosecution would turn over the name and contact information of a witness without first interviewing her, alerting her to the impending disclosure and assessing any potential safety risks. This will now need to be done in this very short 15-day timeframe, rather than needing to be disclosed as a trial approaches. Moreover, the expansive language contained in the statute means that the prosecution will have to undertake and complete this task not simply with respect to witnesses who may testify at trial but with countless other individuals as well. Many law enforcement operations are initiated based upon civilian complaints about criminal activity. The complaints come from all sorts of people, from grandmothers who sit at the window watching their courtyards to store owners who tell the police what they see on the corner. Even in a straightforward case of shoplifting, a single security guard may have apprehended the thief, but half a dozen sales personnel may have witnessed just that apprehension, not the crime itself. Now, for these individuals whom we may have never needed to contact, prosecutors will not only have to contact them within 15 days, but will also have to conduct intensive interviews, inform them of the law's new impact on them, address their safety and privacy concerns in hopes of helping them overcome their reluctance to cooperate, and hand over their contact information to the defendant, all within that timeframe. All this will require substantial additional prosecutorial resources.

It goes without saying that these changes are vast and that more time will be needed to adequately determine the additional resources, staffing, and funding necessary to meet our new obligations, but

it will no doubt will be substantial. One resource suggestion would be to fund the creation of a City-wide electronic portal that allows defense attorneys to contact witnesses through that portal without displaying the witness's sensitive personal contact information. Because the new legislation will likely make witnesses reluctant to come forward – as they'll know that their names and "adequate contact information" must be disclosed to a defendant – this type of technology may be crucial to combat that chilling effect that the laws will have on witness participation, by helping give those witnesses peace of mind that they can stay safe even if they participate with law enforcement.

We stand ready to meet our new mandate, and we want these reforms to succeed. But we can't comply within the boundaries and time constraints set by the Legislature without the resources to do so. I would like to thank the Council for many years of support for the City's prosecutors and the work that we do. We ask that you continue to support that work and do everything in your power to help us to successfully implement these reforms.

nycds
Fighting for your rights, one person at a time

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

Testimony of

Sergio De La Pava

Legal Director

New York County Defender Services

Before the

Committee on Justice System

Oversight Hearing: Preparing for the Implementation of

Bail, Speedy Trial, and Discovery Reform

May 22, 2019

My name is Sergio De La Pava and I am the Legal Director at New York County Defender Services (NYCDS). We are a public defender office that represents around 20,000 New Yorkers in Manhattan's criminal and supreme courts every year. I have been representing clients accused of crimes in this city for more than twenty years. Thank you to Chair Lancman for holding this oversight hearing today and inviting us to testify about the implementation of recent criminal legal system reform bills passed during the state budget process.

NYCDS, along with other defenders and community groups from across the state, advocated for years for the comprehensive reforms that were written into the budget this year. We know that the new reforms to our bail, speedy trial and discovery statutes will have a significant impact on our clients' lives and improve fairness in our courts. We are in conversation with other New York City defender offices to strategize training our supervisors and staff on the new laws, which is our key priority in ensuring that the new laws achieve their stated goals on day one.

Decarceration should be at the center of all of our implementation goals moving forward. The legislature made clear during their discussion of these bills on the Senate and Assembly floor that they voted in favor of bail, discovery, and speedy trial reform in a concerted effort to roll back some of the harm created by stop and frisk and decades of mass incarceration of communities of

color. We hope the Council remains as committed as public defenders and our grassroots partners in staying true to this intent.

We are glad to share our thoughts and concerns about the ongoing logistical transition and to offer suggestions for ways the City Council, the Mayor, and city agencies can advance the cause of justice by facilitating a smooth and rapid rollout of the new reforms.

Discovery

Public defenders must be at the table with District Attorney Offices, law enforcement agencies, and the Mayor's Office of Criminal Justice about the specifics of discovery implementation. We need a system that will allow all parties to easily disclose information as required by statute. NYCDS believes that the new system must be:

- *Electronic.* We are now well into the 21st century. We must invest in an electronic discovery system that will allow all parties to easily upload discovery materials with timestamps so that all parties know when discovery obligations were fulfilled.
- *Easy to use.* The system must be straightforward to use, so that patrol officers, assistant District Attorneys, crime lab technicians, judges, court clerks and defense attorneys can all use the system with minor training and technical support. Training thousands of system actors could become very costly, unless the technology is straightforward so that existing IT staff can easily explain the process and support employees. The more difficult the system is to use, the less likely law enforcement are to upload information expeditiously, and it will be our clients who suffer.
- *Cost-efficient.* E-discovery technology has been around for a long time. The city should consider proposals from various vendors to ensure that we are getting the best possible product for the lowest possible cost. A higher cost does not mean a higher quality product.
- *Secure.* The information to be disseminated through the discovery process is extremely sensitive. Any e-discovery system must be extremely secure and designed to protect against hackers or other unauthorized users.

North Carolina courts began rolling out a criminal court e-discovery platform more than a decade ago.[1] The state's Discovery Automation System (DAS) is generally well regarded by defense counsel, law enforcement and ADAs alike.[2] The system allows prosecutors and law enforcement agencies to upload files directly to the system, where the evidence is timestamped, Bates stamped, and saved as a text-searchable PDF. Audio and video files can also be uploaded. Defense counsel and prosecutors can then download and/or print out the materials for their own files. The whole process also facilitates judicial oversight, allowing judges to see what evidence was turned over, by whom, when. Most importantly, the system allows defense attorneys to easily share evidence with the accused to help them make a timely informed decision how best to proceed in their case.

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[1] North Carolina Courts, *Discovery Automation System*, available at https://www.nccourts.gov/assets/documents/publications/Technology_DAS_Facts.pdf?o70KpOvf9FhgDOSuSaU36Iz0vRQt4TFn.

[2] *See, e.g.,* North Carolina Commission on the Administration of Law and Justice, Technology Committee, *Summary of Public Comments on Interim Report* (2016), available at https://nccalj.org/wp-content/uploads/2016/09/Tech-Public-Comments-Overview.pdf.

We are not advocating any particular system, including the North Carolina Discovery Automation System (DAS). Rather, we urge New York City officials and stakeholders to act quickly to ascertain what are the best options for our courts, knowing that this is one potential model.

One major concern we have at NYCDS is proactively countering any inclination of individuals or prosecutor offices to stop offering plea offers quickly in a case once pre-plea discovery requirements go into effect. One important way to counteract this inclination is to make the discovery disclosure process extremely simple, as is done in North Carolina. The other is for the City and community organizations to hold prosecutor offices accountable if they start to offer fewer or worse pleas because of the new reforms. A prosecutor's duty is to do justice, not to penalize accused people for law reform by state legislators. We urge the City Council to carefully monitor this issue to ensure that these unintended consequences do not occur. We will continue to do our part to monitor trends internally and promptly share any concerns with MOCJ and the City Council.

NYCDS looks forward to working with the Council and other system stakeholders to ensure that we quickly put into place the necessary technology and requisite funding in advance of January 2020.

Speedy Trial

In New York County, we already experience a shortage of trial parts when both the defense and the prosecution are ready for trial. We anticipate that as an outcome of the reforms passed this session, we may see more trials than we did in the past. But our courts are not currently equipped with sufficient personnel for all the trials we have now, much less increased volume. There are a few things this Committee can do to help our courts prepare for the upcoming transition:

- Call on MOCJ to ascertain how many court parts, judge and personnel are available in each borough and what the deficits, if any, currently exist in expeditiously bringing cases to trial. It is our understanding that this is already a problem in Queens, where they have even fewer judges and courtrooms than in Manhattan.[3]
- Call on the Mayor to appoint the maximum number of judges that he has the authority to appoint, to ensure that we have enough trial judges.[4]
- Work with the Office of Court Administration to ascertain what deficits in court personnel staffing (court officers, clerks, court reporters, etc.) exist and assist them in advocating with the state legislature for sufficient funding to meet anticipated needs.
- For criminal and Supreme courthouses owned by New York City, the City Council should take initiative and fund long overdue capital improvements, including improved courtroom

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[3] Christina Carrega, *Staff Shortage Grinds Wheels of Justice to a Halt*, QUEENS DAILY EAGLE, Nov. 13, 2018, available at https://queenseagle.com/all/2018/11/13/understaffing-grinds-wheels-of-justice-to-a-halt.

[4] *See, e.g.,* Corinne Ramey, *Court Officials Blast Mayor de Blasio for Delays on Judges*, WALL STREET JOURNAL, Jan. 2, 2019, available at https://www.wsj.com/articles/court-officials-blast-mayor-de-blasio-for-delays-on-judges-11546465712.

accessibility for people with disabilities,[5] lactation rooms[6] and diaper changing stations in public restrooms[7], to name a few. The City should also advocate for state funding for these capital improvements in any NYC courthouses that are not owned by the City. Making these improvements to our courthouses will show court staff and the public that the City is committed to improving our criminal legal system and making them a better, safer place for all who use them.

As with discovery, we will continue to monitor the availability of court parts and personnel internally and will provide updates to MOCJ and City Council going forward.

Bail

New York County Defender Services did an analysis of our caseload over the past eight months to estimate how many people will be adversely affected before the implementation date of the new bail law if District Attorney Cyrus Vance fails to act and end cash bail for misdemeanors and non-violent felonies. Once bail reform goes into effect, the vast majority of our cases – 86 percent – will no longer be eligible for bail under the new law. The reform will lead to a much larger percentage of our clients being released pretrial without money bail. The raw numbers are staggering. Of those clients who will not be bail-eligible come January, 580 had bail set on them over the past 8 months (324 clients charged with non-violent felonies and 256 charged with misdemeanors other than sex offenses or criminal contempt in the second degree). Extrapolating our case numbers for all of the cases in Manhattan, we estimate that District Attorney Vance could protect nearly 3000 from pre-trial incarceration on Rikers Island over the next 8 months by simply complying with the new bail reform law, and New York's legislative intent, earlier than mandated.

The City Council should work with District Attorneys and MOCJ to overcome any obstacles to ending the use of cash bail in the vast majority of cases as quickly as possible. The human cost of prosecutors' failure to adapt quickly is enormous, but there are thousands of people citywide who could avoid pre-trial incarceration altogether if the District Attorneys act quickly.

If you have any questions about my testimony, please contact me at sdelapava@nycds.org.

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[5] New York Lawyers for the Public Interest, *Accessible Justice: Ensuring Equal Access to Courthouses for People with Disabilities* (March 2015), available at https://www.nylpi.org/wp-content/uploads/2015/03/Accessible-Justice-NYLPI-3-23-15.pdf.

[6] *See, e.g.,* Angela Morris, *Women Push for Lactation Rooms in Courthouses*, LAW.COM, March 12, 2019, available at https://www.law.com/2019/03/12/women-push-for-lactation-rooms-in-courthouses/.

[7] Ese Olumhense, *Pleas for Relief: Urgent Need for Diaper Stations in Bronx County Building*, THE CITY, April 17, 2019, available at https://thecity.nyc/2019/04/urgent-need-for-diaper-stations-in-bronx-county-building.html

THE BRONX FREEDOM FUND

May 1, 2019

New York City Council: Committee on the Justice System
Oversight Hearing: Preparing for the Implementation of Bail
Testimony of the Bronx Freedom Fund

Councilmember Lancman and members of the Committee, thank you for the opportunity to testify. My name is Elena Weissmann, and I am the Director of The Bronx Freedom Fund, a community bail fund which for over ten years has provided bail assistance to New Yorkers who would otherwise be incarcerated for their poverty.

We are thrilled to see the New York State legislature take an important first step in addressing the humanitarian and civil rights crisis caused by our cash bail system. We applaud all the directly impacted individuals, advocates, and organizers that have worked tirelessly for decades to uproot this unjust system. We stand ready to monitor implementation and appreciate the Council's foresight in planning for these changes.

I want to echo the recommendations shared by my colleagues at Bronx Defenders, and add two more points to consider in how these policies will be implemented. Our experience paying bail for thousands of New Yorkers, especially in monitoring other laws' implementation and providing voluntary pretrial support, can aid in ensuring these policies come to full fruition.

First, we urge the Council to take the necessary steps to ensure the Department of Correction will comply with the release provisions of the new law. Over the last two years, we have monitored DOC's compliance with City Council's Local Law 123, mandating that DOC release people within three hours of their bail being paid. We have documented widespread noncompliance, but even after multiple oversight hearings, media reports, and meetings with the Department itself, we are still seeing our clients held in jail hours beyond the legal limit. If DOC still has not complied with a modification of their existing release practices, how can we expect them to voluntarily comply with an entirely new provision about releasing people?

The Council should work with DOC to codify plans on timely release, especially now that people can be released through alternative means such as unsecured bonds and non-monetary conditions. We also urge the Council to identify and implement accountability mechanisms to ensure compliance for these and future policy changes.

Second, we urge the Council to look to our successful model when considering provisions for "non-monetary conditions." We are troubled by the potential replacement of cash bail by similarly oppressive and onerous structures such as electronic monitoring or mandatory drug testing. 95 percent of all our clients return for their court dates, with no money on the line and no mandatory conditions imposed. Instead of requiring our clients to submit to drug tests or electronic ankle shackles, we send effective court reminders and offer voluntary support services to our clients. Our intervention is simple: we remind our clients about court through whatever means they prefer, such as texting, Facebook messenger, or communication with a loved one. For those clients who express a need for additional support in returning to court or otherwise obtaining stability, we offer voluntary services or referrals. This could include providing MetroCards for commuting to and from the courthouse, information about free childcare during court, referrals for free cell phones, or referrals for job training or shelter options.

Our results demonstrate the needlessness of some of the proposed alternatives to cash bail. People return to court not because they are compelled, but because they want to and they have the means to. We implore the Council to continue its commitment to limit the harm and collateral consequences of the criminal legal system and work towards preventing the net-widening of the system.

Thank you for your consideration and for the opportunity to testify today. We hope the Council will take our recommendations seriously and promote the speedy, effective, and just implementation of New York State's bail reform laws.

THE LIBERTY FUND

Testimony of

David Long
Executive Director, The Liberty Fund

before the
New York City Council
Committee on Justice System
on

Preparing for the Implementation of Bail, Speedy Trial, and Discovery Reform

May 22, 2019 | 1:00 p.m.
City Hall – Committee Room | New York, NY

I want to thank Chair Lancman and all the City Council members and staff for allowing me to testify today. My name is Dave Long and I am the Executive Director of The Liberty Fund.

The Liberty Fund is the New York City Council sponsored charitable bail fund that operates in all five boroughs of New York City. Our bail associates are in the arraignment court parts every night from 6:00pm until court closes at 1:00am or later.

This unique set-up allows us to post bail immediately after it has been set, and results in our clients being released directly from court and never entering into the Department of Corrections admittance process. Instead of going to Rikers that night, and in all likelihood several more nights, they are leaving court and going home to resume their lives.

The Liberty Fund began operations in August of 2017 and along with my testimony today, I have submitted our summary report with data on our first year of operations. Highlights of our success include:

- We have posted bail for 830 men and women, all of whom could not afford their misdemeanor bail.
- We have achieved a 87% court appearance rate.
- In an extremely conservative estimate, we prevented approximately 4000 days of pre-trial detention and costs.
- Additionally, we have made close to 300 social service referrals for our clients in need areas such as housing, education, legal services and substance abuse.

Clearly, The Liberty Fund has been an important stabilizing factor in our client's lives, intervening during the tumultuous period that occurs post arrest and continuing during the pendency of their court cases.

For the bail system as it currently operates, charitable bail funds serve a vital purpose in the efforts to keep individuals arrested for misdemeanors, who have not been found guilty of any charges in the community, out of our correctional system. The Liberty Fund has been a vital and important player in the efforts to alleviate some of the issues of our broken bail system.

But this hearing is about the future of bail and what that landscape will now look like come January 1st, 2020. As everyone in this room is aware, on April 1, 2019, New York State passed sweeping criminal justice reform legislation that drastically limits money bail and pretrial detention for most misdemeanors and nonviolent felony defendants along with requiring prosecutors to disclose their evidence to defense earlier in case proceedings and a promotion of speedy trial rights.

In this changing landscape, The Liberty Fund can be a beacon organization that provides a stabilizing effect on the wind down of bail while simultaneously evolving into a valuable and much needed response to the increasing number of individuals that will no longer be getting bail and instead released on their own recognizance (ROR).

The Liberty Fund will be able to use its experience and respected presence in the court setting to be a proactive and productive response to this monumental reform effort by providing voluntary enhanced case management and court reminders to a vulnerable population. The Liberty Fund is uniquely positioned to allow the New York City Council to be an innovative leader in New York City's shifting criminal and social justice settings. The Bail Reform measures taking place in 2020 does not eliminate the serious need for case management assistance for the pre-trial population; in fact, it actually increases it.

Below is an outline to how The Liberty Fund will be an integral and important part of the next fiscal year with its responsive programming in the pretrial service area. As misdemeanor bail is drastically reduced in January 2020, the Liberty Fund programming will shift to the ROR Case Management Program to provide comprehensive pretrial case management services for individuals released on their own recognizance (ROR). Dedicated social workers and case managers from The Liberty Fund will work with individuals securing and navigating needed community based services while providing case notification and monitoring.

The target population for this program will continue to be individuals charged with misdemeanor crimes as it was with our bail program. But now the focus will be on the ROR population, which comprised nearly 80,000 people in 2018 alone. We anticipate this number to increase after January 2020.

The pretrial time period is a critical for our target population and often determines whether a person ceases further criminal justice system involvement or recidivates back into the system. Responsive interventions during this pretrial period are critical in keeping these individuals from recidivating.

By bringing the knowledge and experience of being a successful charitable bail fund, The Liberty Fund will incorporate our expertise developed from working with the pretrial population into a impactful voluntary social service that can benefit both the bail and ROR population to make all their court dates, navigate their lives more efficiently and prevent future involvement with the criminal justice system.

In conclusion, I have personally been involved in the criminal justice system for over 30 years -- as a police officer, probation attorney and project director of several alternative-to-detention and incarceration programs. In my humble opinion, this reformative moment in time is providing a unique dual opportunity: to transform our bail practices, while also providing the chance to establish critical voluntary programs as an integral part of transforming our criminal justice system into a more humane and fair one that administers authentic justice for those arrested and the community as a whole.

Thank you for your time today.

THE LIBERTY FUND

YEAR ONE OUTCOMES

July 1, 2017 to June 30, 2018

I. INTRODUCTION

In its first year of operation, The Liberty Fund made a profound impact in bringing fairness to New York City's criminal justice system.

The Liberty Fund was established as part of a city-led strategy to reduce the number of people detained on bail of $2,000 or less. George McDonald, founder and president of The Doe Fund, and the New York City Council, identified the need for New York City to lead the way by establishing a citywide charitable bail fund.

Today, The Liberty Fund operates as an independent 501 (c)(3) not for profit organization consisting of 10 licensed bail bond agents. It is the first citywide charitable bail fund in New York City and the only organization that covers arraignments each day until the close of court for the evening--with bail bond agents posted at four courthouses every night of the year from 6pm until 1am. This ensures that individuals arraigned late at night can have bail posted on their behalf and avoid pre-trial detention in Rikers Island.

The financial inability to post bail often forces people to plead guilty in order to get out of jail. This results in a person's financial situation being the determining factor in who may or may not spend weeks or months in jail. The inability to post bail results in decisions to plead guilty in order to go home and greatly impacts a person's presumption of innocence and their right to a fair trial. Time spent in jail as someone who has not yet been found guilty of any crime can result in the loss of a job, home and negatively affect the family unit.

The Liberty Fund's mission is to reduce the number of New Yorkers subjected to pretrial detention due to their inability to post bail. It achieves this mission by advancing the following goals:

- To reduce the number of New Yorkers subjected to pretrial detention.
- To maintain the presumption of innocence by allowing clients the freedom and choice to contest charges against them.
- To support clients in other aspects of their lives through voluntarily provided services.

II. ABOUT OUR BAIL RECIPIENTS

1. In FY18, the vast majority of Liberty Fund bail recipients were male (87%) and between the ages of 20 and 45 (76%).

Figure 1: Gender of Liberty Fund Bail Recipients in FY18

GENDER	CLIENTS	%
Female	50	12%
Male	358	87%
Female trans	1	>1%
Male trans	1	>1%

Figure 2: Age of Liberty Fund Bail Recipients in FY18

AGE	CLIENTS	%
16 to 20	16	4%
21 to 25	71	17%
26 to 30	83	20%
31 to 35	62	15%
36 to 40	55	13%
41 to 45	44	11%
46 to 50	26	6%
51 to 55	25	6%
56 to 60	23	6%
61 to 65	3	1%
66+	2	>1%

2. In FY18, The Liberty Fund made 101 referrals to bail recipients with information about social services and agencies. The Liberty Fund provides voluntary social service referrals to help bail recipients maintain their freedom and limit their future interaction with the criminal justice system. Figure 3 details the areas of need.

Figure 3: Liberty Fund Bail Recipient Social Service Referrals in FY18

REFERRAL	CLIENTS	%
Benefits	9	9%
Counseling	11	11%
Education	8	8%
Employment	21	21%
Housing	12	12%
ID / documentation	2	2%
Immigration	1	1%
Legal services	5	5%
Medical / dental	3	3%
Mental health	7	7%
Parenting	1	1%
Shelter	8	8%
Substance abuse	7	7%
Victim services	1	1%
Other	5	5%

III. PROGRAM OUTCOMES

The Liberty Fund started full time operations near the beginning of FY18 and posted bail in a total of **410 cases**. Of those, 182 cases are open and still pending an outcome in court; 173 cases are closed, with bail was returned to the Liberty Fund; and 55 cases are closed in which bail was forfeited.

1. In FY18, 87% of Liberty Fund clients made all of their court appearances (355 out of 410).

2. The total amount of bail posted in FY18 by The Liberty Fund was $368,550.

3. The two most frequent bail amounts posted by The Liberty Fund were $500 (35% of all cases) and $1,000 (33% of all cases).

Figure 4: Liberty Fund Bail Amounts Posted in FY18

BAIL AMOUNT	CASES	%
$100	1	>1%
$250	12	3%
$300	3	1%
$500	142	35%
$750	39	10%
$800	1	>1%
$1,000	137	33%
$1,500	47	11%
$2,000	28	7%

4. In FY18, The Liberty Fund was refunded $125,850 back into its revolving bail fund to be used for future Liberty Fund clients. All successful closed cases have their posted bail monies going back to original bail fund after the court processes paperwork.

5. The average number of days between Liberty Fund clients' arraignment date and first court date was 5 days in FY18.

Figure 5: Number of Days Between Liberty Fund Clients' Arraignment Date and First Court Date in FY18

NUMBER DAYS BETWEEN ARRAIGNMENT DATE AND FIRST COURT DATE	CLIENTS	%
0	4	1%
1	9	2%
2	11	3%
3	42	10%
4	37	9%
5	199	49%
6	9	2%
7	4	1%
8	6	1%
9	3	1%
10	5	1%
11+	81	20%

6. The Liberty Fund saved New York City at least $1,521,100 in FY18. The New York City Controller's report has placed the cost of housing an individual at Rikers Island at $742 a day. With 610 clients avoiding an average of five nights in prison, this amounts to over $1.5 million in savings to the City of New York.

(410 clients x 5 days x $742 per client per day = $1,521,100)

IV. BAIL RECIPIENT TESTIMONIALS

The following are first-person testimonials provided by just four of the 410 individuals served by The Liberty Fund in FY18:

"I just got my son back last week after winning custody in court after I finished my seven months in a drug program. I don't wanna go back to Rikers. Please help me go home. I swear I'm coming to court. My kids need me and need to know I am there for them. This was such a big mistake I will never do again."

"I just finished my State time a few months back. I didn't do what police said, I was just trying to get money so I wouldn't jump turnstile. Thank you for believing in me and giving me a chance. I can't go back inside. I'm on meds and they would have given me wrong stuff I know it. Plus this would have hurt me being able to recertify my housing voucher because they make you do that in person."

"Getting out lets me keep my construction job and also help my girlfriend take the kids to school."

"I just started a new job last month and no doubt they would have fired me if I missed days so soon. I'm glad a company like Liberty Fund exists otherwise I'd be at Rikers which I heard is crazy bad."

PROPOSED MBBA COMMENTS – JUSTICE SYSTEM COMMITTEE HEARING

The Metropolitan Black Bar Association welcomes the newly enacted criminal justice reforms, and supports the belief that the presumption of innocence means the presumption of pre-trial release. These reforms are major leaps forward that will immediately transform the lives of thousands of detained New Yorkers throughout the State, and millions more in the future.

For far too long, thousands of indigent New Yorkers have been subjected to incarceration before receiving any evidence related to their cases. Pre-trial detention unfairly deters arrestees from defending themselves at trial because of unreasonably high monetary bail requirements and a lack of viable bail alternatives.

For Black and Latino New Yorkers, we have been disproportionately impacted by pre-trial incarceration. It has led to collateral consequences such as job loss, family separation, and indescribable violence, abuse, and trauma at jails like the Rikers Island Prison Complex. With these new changes, people who would have otherwise been unfairly detained will be able to keep their jobs, stay in school, and support their families.

Additionally, these reforms will have a significant impact on how people resolve their cases. Many criminal defense attorneys believe that non-pretrial detainees receive fairer plea offers than pre-trial detainees. These new bail reforms will lead to more equitable plea negotiations, where the onerous burden of pre-trial incarceration is not a factor in a person's ability to decide the best course of action for their case.

Similarly, the discovery reform legislation represents a tremendous change in the operation of the criminal justice system. For years, New York has lagged behind states like Texas, where parties were afforded "open discovery," meaning that both sides freely share relevant information about the case, including surveillance video, physical evidence, witness statements, and more. Effective and open information sharing is critical to the administration of a fair and just legal system. It is unfair to charge a person with a crime, but allow prosecutors to withhold pertinent information from the defendant. The new discovery reform legislation acknowledges this inequity and will remedy this clear injustice. The new legislation will require information sharing within days instead of at the prosecutor's discretion, which in some cases has meant delays in turning over vital information for months or even years. With more information earlier in the process, attorneys can better inform their clients of the strengths and weaknesses of their cases, and determine the best trial strategy so that their clients can make informed choices about how they want their cases to be resolved.

The MBBA urges District Attorney Offices, the Judiciary, the Defense Bar, and all other stakeholders to fully understand and take affirmative steps to implement the spirit, intent, and letter of the new laws in an effort to remedy the multitude of injustices that have disproportionately affected New Yorkers of color for generations.

The enactment of these new laws once again brings New York State to the forefront of progressive legal action in this country, which is where we belong. The MBBA urges the City Council members and the State Legislatures to monitor the results of these new laws throughout the implementation phase to ensure that they are being executed fairly and consistently in New York City, and to identify necessary improvements.

The MBBA looks forward to a criminal justice system that does not unfairly punish indigent defendants and we advocate for a fairer system for everyone. These reforms are long overdue in New York State.

THE CENTER

Committee on Justice System
Jointly with the Committee on Finance and the Committee on General Welfare
Oversight - Preparing for the Implementation of Bail, Speedy Trial, and Discovery Reform
May 22, 2019

Testimony of
Aaron Sanders, Outreach and Organizing Coordinator
The Lesbian, Gay, Bisexual & Transgender Community Center
New York, NY

THE LESBIAN, GAY, BISEXUAL & TRANSGENDER COMMUNITY CENTER
208 W 13 ST NEW YORK, NY 10011

T. 212.620.7310
F. 212.924.2657
gaycenter.org

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Good morning, my name is Aaron Sanders, and I am the Outreach and Organizing Coordinator at The Lesbian, Gay, Bisexual & Transgender Community Center, also referred to as The Center, which is located in the West Village. In my former role, I was a Community Liaison at Friends of Island Academy, a nonprofit organization that advocates for justice-involved youth while they are incarcerated at Riker Islands and provides support thereafter.

New York City's LGBTQ community formed The Center in 1983 in response to the HIV/AIDS epidemic, ensuring a place for LGBTQ people to access the information, care, and support they were not receiving elsewhere. Today, The Center has become the largest LGBTQ community center on the East Coast, where we host over 400 community group meetings each month and welcome over 6,000 individuals each week. We are proud to offer services to New Yorkers across the 5 boroughs, ensuring that all LGBTQ New Yorkers can call The Center home. The Center has a solid track record of working for and with the community to increase access to a diverse range of high-quality services and resources, including our services for LGBTQ immigrants, substance use recovery programming for adults and youth, economic justice initiatives, and our youth leadership and engagement programs.

Following the 2016 election, The Center revised its strategic plan to include statewide advocacy, a program we now call RiseOut. This initiative is a collective of community leaders and allies from every region in New York working together to advance LGBTQ-affirming legislation and policies statewide. Through our outreach and convening of stakeholders statewide, we identified restorative justice as a shared goal, and as a result, restorative justice is a key focus of our advocacy efforts.

For The Center, restorative justice means standing up for community members who are most often negatively impacted by a system intended to help them, particularly transgender and gender non-conforming community members, as well as queer people of color. In order to work towards our goal of advancing restorative justice, The Center recommends the following:

- The City Council should take the necessary steps to ensure pretrial reforms have the greatest decarceral effect when implemented. For example, in 2018, 72% of New Yorkers were released on their own recognizance. The City Council must ensure that we do not see a decrease in this percentage under the new legislation.
- The City Council must require training for police departments to implement the appearance ticket portion of the legislation and must ensure oversight over NYPD. We also recommend that the NYPD keep track of and make public all instances when an officer does not issue an appearance ticket.
- In cases where judges can still set money bail, the City Council should require timely facilitation and processing of unsecured and partially secured bail payment.
- The City Council must ensure that judges are complying with the mandate to consider a person's ability to pay when setting bail.
- In order to have an accountable implementation process, the City Council must set up a pretrial implementation committee that includes community organizations and impacted people.

Lastly, money bail continues to be unjust, discriminatory and criminalizes low-income people and communities of color. While this issue may not be under The City's purview, The Center is committed to

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F. 212.924.2657
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working with the Administration and the City Council to push the state legislature to enact further bail reform legislation that ends money bail and protects due process for all people.

We welcome the opportunity to partner to help realize any of the recommendations referenced above. Thank you to the Committee for the opportunity to provide this testimony today on an issue of great importance city-wide. We look forward to continue working with you to ensure New York City's future as a safe space for all New Yorkers.

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Name: Vidal Guzman

Address: _____

I represent: JLUSA / CLOSEr iKons

Address: _____

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(PLEASE PRINT)

Name: Aaron Sanders

Address: _____

I represent: LGBT Center

Address: _____

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(PLEASE PRINT)

Name: Yung-Mi Lee

Address: 177 Livingston St. Brooklyn NY

I represent: Brooklyn Defender Services

Address: same.

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Name: Marie Ndiaye

Address: _____

I represent: Legal Aid Society

Address: 199 Water St.

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Date: 5-22-19

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Name: Nicole Triplett

Address: 1 Whitehall Street, NY, NY

I represent: New York Civil Liberties Union

Address: _____

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Name: ZACHARY KATZNELSON

Address: 121 6TH AVE NY, NY 10013

I represent: LIPPMAN COMMISSION

Address: SAGE

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(PLEASE PRINT)

Name: DISTRICT ATTORNEY DARCEL CLARK

Address: BXDA 198 E 161

I represent: _____

Address: _____

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Name: Special Narcotics Prosecutor Bridget Brennan

Address: 80 Centre St

I represent: _____

Address: _____

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Name: Cyrus R. Vance, Jr. - Manhattan D.A.

Address: 1 Hogan Place, New York, NY 10013

I represent: X X

Address: _____

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Name: Lance A. Clarke, Esq.

Address: 11 Park Place Suite 914 NY NY 10007

I represent: Metropolitan Black Bar Assoc.

Address: _____

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Name: Asha Smith, Esq.

Address: _____

I represent: The Metropolitan Black Bar Assn.

Address: _____

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(PLEASE PRINT)

Name: John M Ryan Kew Gardens

Address: 125-01 Queens Blvd NY

I represent: Queens DA

Address: _____

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Name: Zoë Adel

Address: 195 Montague St. 14th Fl, Brooklyn NY 11201

I represent: Brooklyn Community Bail Fund

Address:

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Name: Eli Northrup

Address: 245 W 115th St, NYC, NYC

I represent: The Bronx Defenders

Address: 360 E 161st St, Bronx, NY

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Date: _____

(PLEASE PRINT)

Name: Sergio De La Pava

Address: _____

I represent: New York County Defender Services

Address: (NYCDS)

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(PLEASE PRINT)

Name: Elena Weissmann

Address: 360 E. 161 st Bx NY 10451

I represent: Bronx Freedom Fund

Address: _____

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Name: DAVID LONG

Address: 428 BROADWAY - NYC

I represent: LIBERTY FUND

Address: _____

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Date: _____

(PLEASE PRINT)

Name: Yung-Mi Lee

Address: Brooklyn Defender Services

I represent: _____

Address: _____

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(PLEASE PRINT)

Name: A Kyla Tomlinson

Address: _____

I represent: FREEnewyear / CLOSEikers campaign

Address: _____

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(PLEASE PRINT)

Name: Fred Parker

Address: _____

I represent: JLUSA / CLOSErikers

Address: _____

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(PLEASE PRINT)

Name: Sidni Sommer

Address: _____

I represent: Mayor's Office of Criminal Justice

Address: _____

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Date: _____

(PLEASE PRINT)

Name: Chatodd Floyd

Address: _____

I represent: Mayor's Office of Criminal Justice

Address: _____

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