



THE BRONX FREEDOM FUND

**New York City Council Hearing
“Examining the New York Bail System and the Need for Reform”
Testimony of Alyssa Work
Project Director, The Bronx Freedom Fund**

**Submitted to the Courts and Legal Services Committee
June 17, 2015**

My name is Alyssa Work. I am the Project Director of The Bronx Freedom Fund. Thank you to the Committee for the opportunity to testify today.

The Bronx Freedom Fund is a nonprofit, revolving bail fund that provides direct bail assistance to eligible New Yorkers who are too poor to afford bail in misdemeanor cases. We have been operating since 2013 as the first charitable bail fund licensed under New York’s Charitable Bail Organization law.¹ In the nearly two years since we opened, we have posted bail for 230 people, of whom 97% have returned for every court date. We receive referrals from attorneys at The Bronx Defenders for clients who fall under the parameters of the charitable bail organization law. The Freedom Fund remains connected with our clients over the duration of their cases, reminding them about court dates, providing any logistical assistance they need to meet their court obligations, and working with the holistic defense advocates at The Bronx Defenders to ensure our clients have any additional supports they need to stabilize their lives while their cases are pending.

In addition to providing direct bail assistance, The Bronx Freedom Fund consults with organizations, as close as Manhattan and as far as Washington State, who are interested in creating charitable bail funds. We have worked with Senator Gustavo Rivera, who sponsored the charitable bail organization law, to educate interested nonprofits and expand the model around the state. The Bronx Freedom Fund is committed to working toward a bail system in New York City that is fairer and more equitable, and we are heartened by the Council’s attention to the deeply pressing issue of bail in New York City.

Damaging Effects of New York’s Current Bail System

As the project director of the Freedom Fund, I see firsthand the effects of cash bail set out of reach of families in poverty. When a judge sets bail at \$500, she or he may believe that amount is a “low” bail, easily paid by a family member or friend to ensure the person’s return to court. Under New York law, that is the purpose of bail: to secure a defendant’s court attendance.² But in the nation’s poorest congressional district, the South Bronx — where 39% of people live below the poverty line and the median household income is just over \$25,000³ — five hundred dollars often might as well be fifty thousand.

¹ New York Ins. Law. §6805(b)(1).

² New York C.P.L. §510.30.

³ Thomas Gabe, Congressional Research Service, *Poverty in the United States: 2013* (January 29, 2015).

Last month, I met a young man downstairs in the concrete pens at Bronx Criminal Court. He had just had bail set at \$750 in a misdemeanor, his first arrest. When I asked whether there was anyone who he thought could post bail for him, he could barely get a sentence out, he was so panicked. His grandmother, with whom he lived, was on Social Security disability assistance and had zero additional income. He knew that if he stayed in jail even overnight, he would lose his job in a restaurant and his means of financially supporting himself, his grandmother and his baby son. For many of us here, \$750 would be a burden and an annoyance, but not an impossibility. But for this man, it meant that without bail fund assistance his options were suddenly extremely limited: plead guilty to a misdemeanor as soon as possible to get out of jail, or make the excruciating decision to turn down a plea offer and stay in for weeks or months awaiting a trial or dismissal.

This happens every single day across New York City. Every day I speak with families desperate for their sons, daughters, mothers and husbands to return home but lacking the only cognizable currency in our criminal justice system: money. The Freedom Fund's capacity to provide bail fund assistance is limited by our resources, but we know that the scope of the problem is vast: seventy-eight percent of people incarcerated at Rikers are awaiting trial, and more than 10,000 people a year spend time behind bars pretrial because they are unable to pay cash bail of \$2000 or less.⁴

Inability to pay bail warps the framework of "innocent until proven guilty." Bail is the single most important determinant of case outcomes in low-level cases. For misdemeanor defendants detained from the beginning to the end of their case, 92% of cases end in a conviction. For those who are released or out on bail, only fifty percent end in a conviction.⁵ Of our clients whose cases have resolved while they were out on Freedom Fund bail, more than half (56%) had all charges against them dismissed. That is a staggering number. This means that among Freedom Fund cases alone, a hundred people would have spent days, weeks or months incarcerated on charges supported by little or no evidence. And it means that for the 46 percent⁶ of criminal defendants who cannot afford bail of \$500 at arraignment or at any point afterward, the rational decision is often to plead guilty at the first opportunity in exchange for time served. The cost is a criminal record — regardless of guilt or innocence and before significant investigation can be done into the strength of the charges.

Overwhelmingly, our clients appear at their scheduled court dates. Ninety-seven percent of our clients have made every required court appearance to date — some as many as 11 court dates over the course of a year as their cases are adjourned and adjourned again due to massive court delays. The young man I mentioned earlier whose grandmother could not pay bail? The Freedom Fund paid his bail and he has appeared in court twice since, sitting outside the courtroom before 9:30 every morning and quick to send a text letting me and his lawyer know that he's there. In part, this is due to our rigorous efforts to remind clients about court dates. But it is important to point

⁴ New York City Independent Budget Office, "New York City's Jail Population: Who's There and Why?" (Aug. 22, 2013); The Wall Street Journal, "New York City Fund Would Pay Bail for Some Accused of Misdemeanors" (April 10, 2015).

⁵ Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low-Income Nonfelony Defendants in New York City*, at 33 (2010).

⁶ New York City Criminal Justice Agency, *Annual Report 2013*, at 30 (December 2014).

out that most misdemeanor defendants appear in court with no incentives beyond the risk of a bench warrant for nonappearance. Among defendants released on their own recognizance without bail, 93 percent appear in court for every appearance or return themselves voluntarily within 30 days.⁷ “Risk of flight” in misdemeanor cases is, very often, merely an issue of communication — reminders about court and schedule coordination go a long way to ensure appearance.⁸ The thousands of people incarcerated pretrial on low bail include many who would appear at court but are too poor to gain the opportunity to do so.

The City Council’s Proposed Bail Fund

We are excited about the City Council’s proposal to establish and fund a citywide bail fund for the thousands of New Yorkers who spend their days in cells on Rikers Island because they cannot afford to pay \$500 or \$1000 for their freedom. If administered in a way that supports clients and expands their opportunities for a fair trial, a citywide bail fund on the scale the Council envisions would be a much-needed resource for many more poor New Yorkers.

Could a bail fund be administrable on a city-wide scale using the \$1.4 million dollars proposed for such a fund? Based on our experience, we are confident that it could and are ready to assist in making that fund a reality. There are three main components it would need to succeed: first, adequate bail funds allocated for each borough. The proposed \$1 million in bail funds across five boroughs would be a solid start. Second, a referral mechanism to quickly locate eligible defendants who cannot afford bail at arraignment. Third, staff available at court to interview clients and post bail, as well as a system for reminding clients about upcoming court obligations. With those logistical and staffing requirements in place, a bail fund could operate at several times the scale of the Freedom Fund.

Our experience has shown that there are significant benefits to operating a bail fund in partnership with a holistic public defender office. Clients have access to a team of advocates for civil, immigration or family court issues that may be entwined with their criminal court case. A citywide bail fund would be best administered in conjunction with holistic public defender offices or other organizations with established commitments to court-involved or formerly incarcerated New Yorkers.

We believe strongly that a citywide bail fund with the goal of supporting equal justice for poor New Yorkers should not tie bail assistance to a mandated compliance component. Bail funds should not be conditioned on drug tests, classes, hand scans or other mechanisms that carry the potential to further entangle clients in the criminal justice system through technical violations. If implemented only for those who cannot afford bail, these conditions would compose a new form of unequal pretrial punishment for the poorest residents of this city. Further, a bail fund with mandated services risks a “net-widening” effect by which courts might opt to set bail more frequently, leaving more people who might have been released on their own recognizance subject to additional duties and violations before any adjudication of guilt. We support helping clients meet their court obligations through reminders, and having social or legal services available as a voluntary resource for clients – not as a form of supervision carrying sanctions.

⁷ New York City Criminal Justice Agency, Annual Report 2013, at 35 (December 2014).

⁸ New York City Criminal Justice Agency, Annual Report 2013, at 38 (December 2014).

Finally, we would caution the City against narrowly limiting the categories of individuals and cases eligible for bail fund assistance. Jail inflicts harm widely. Students who have never been arrested before and fifty-year-olds with many mistakes in their past alike may be wrongly charged with a broad range of minor offenses. For a bail fund to have a real downsizing effect on jail population, and for bail assistance to begin to level the playing field for those in poverty in the criminal justice system, it has to be open to more than a select few misdemeanor defendants.

Other Solutions

Aside from the city's bail fund proposal, there are other policies and practices the City should adopt that would reduce the number of people incarcerated on bail for low-level offenses. Although the City cannot directly pass legislation that would eliminate misdemeanor bail, it can discourage district attorneys from asking for bail in misdemeanor cases, educate judges about less burdensome forms of bail, and re-configure the bail paying process in the courts and Department of Corrections to make it less onerous for families.

Encouraging the use of unsecured or partially secured bond, for instance, would eliminate some of the wealth-based inequity of the current system; a family member could vouch for their loved ones' appearance without having to have access to hundreds of dollars in cash. The use of credit card bail in several boroughs over the past year has been successful and has not resulted in any increase in failure to appear,⁹ but credit card bail should be accepted at DOC facilities as well as at court.

Finally, it needs to be easier for families to post bail quickly if bail is set within their means. Currently there is a very short window of time – at most two hours – in which family members can pay bail at court after arraignment, ensuring that a person does not spend any time at Rikers Island. Very often, by the time family gets money together and arrives at court, their loved one has been placed on a bus to the jail. The Department of Corrections should keep individuals at court for longer than two hours to give family members a chance to gather bail and arrive at court.

Family members should be able to pay bail at a remote kiosk or through a borough court clerk's office, rather than having to travel hours to Rikers Island. It can take upwards of eight hours to pay a bail at Rikers when travel time, standing in line, search and wait times add up. Wait times could be improved by updating the outdated technology that DOC currently relies on to fax paperwork to and from the cashier. And when people are released from jail after bail is paid, there should be a means for them to communicate with family to arrange to be picked up safely, rather than telling family members to wait outside of the front gate for hours in the hopes of catching a glimpse of the person as he or she is released.

Thank you once again for the opportunity to testify. We hope that the City takes advantage of this moment to make critical changes to the City's practices in bail and pretrial detention.

⁹ Mary T. Phillips, New York City Criminal Justice Agency Research Brief No. 35, Paying for Bail on Credit, at 7 (September 2014).