



**BROOKLYN
DEFENDER
SERVICES**

Comments by:

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BROOKLYN DEFENDER SERVICES

Presented before

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Listening Session on Abuses by the Bail Bond Industry**

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My name is Catherine Gonzalez and I am a staff attorney in the Criminal Defense and Padilla units at Brooklyn Defender Services (BDS). BDS is one of the largest legal services providers in New York City, representing approximately 35,000 low-income Brooklyn residents each year who are arrested, facing child welfare allegations or deportation. BDS also provides a wide range of other services to our clients, including housing, education, employment and immigration legal assistance and advocacy. I thank the New York State Department of Financial Services (DFS) and the Department of State (DOS) for this opportunity to testify about the immense harm of commercial bail bonds on our clients, their families and communities. Ultimately, the State should work toward abolishing this predatory and unnecessary industry. My comments will center the stories of the people we represent.

I. BACKGROUND

The commercial bail industry serves no legitimate purpose and should be abolished. We echo the call of New York City Comptroller Stringer for the “total abolishment of

commercial bail bonds.”¹ There is no place for for-profit actors in determinations of liberty, including during the pre-trial period when people are presumed innocent.

Approximately 16,000 people are detained in local jails across New York State every day because they cannot afford to pay bail. Though New York’s bail statute provides judges nine different options for bail, including options that do not require the defendant to pay anything upfront, the nearly invariable practice of judges is to offer people accused of crimes the most onerous and ultimately punitive choices: Pay the full amount now or visit a bail bondsman. (I can recall only one case in which a judge allowed for a partially secured bond.) A recent report published by the Lippman Commission, empaneled by former City Council Speaker Melissa Mark-Viverito to investigate our City’s criminal justice system and develop a plan for the closure of the jails on Rikers Island, demonstrated that judges and prosecutors rarely spend any time considering the defendant’s ability to pay.² Therefore, most of our clients for whom bail is set in any amount default to spending an uncertain amount of time on Rikers Island because they are unable to pay, even if the bail is set as “low” as \$100.³ Convicted of no crime, thousands of people are detained in New York City jails until and unless their loved ones can scrape together enough money to buy their freedom from a third-party whose only motive is profit.⁴ This injustice fuels a thriving for-profit bail bond industry, in which defendants and their families are forced into predatory and often illegal financial agreements with little or no recourse.

Families in this situation pay a non-refundable portion of the total bail amount to a bail bond company, who then writes a bond for the full bail amount. Bail bond agents also require collateral, generally in the form of significant additional upfront money and/or property titles, and often charge additional fees. Finally, the agreement may incorporate additional terms and conditions, such as required check-ins and consent to surveillance.

While there are laws in place to regulate the charges imposed by bail bond companies, many companies violate the laws with impunity. For example, the law imposes a cap on total premiums and compensation, excluding collateral that is slated to be returned at the close of a case, based on a formula laid out in the bail statute. In our experience in Brooklyn, many if not most commercial bail bonds charge premiums and fees that exceed the cap. Any such additional monetary charges are illegal, but are routinely charged by bail bonds agents. DFS does not take action to stop these illegal charges, in my experience. Collateral is unregulated, and may be extremely costly; its return to

¹ NYC Comptroller Scott M. Stringer, *The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC* (2018), <https://comptroller.nyc.gov/reports/the-public-cost-of-private-bail-a-proposal-to-ban-bail-bonds-in-nyc/>.

² Independent Commission on New York City Criminal Justice and Incarceration Reform, *A More Just New York City* (2017), available at <http://www.ncsc.org/~media/C056A0513F0C4D34B779E875CBD2472B.ashx>.

³ Cherise Fanno Burdeen, *The Dangerous Domino Effect of Not Making Bail*, THE ATLANTIC, April 12, 2016, available at <https://www.theatlantic.com/politics/archive/2016/04/the-dangerous-domino-effect-of-not-making-bail/477906/>.

⁴ American Civil Liberties Union & Color of Change, *Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System* (May 2017), available at https://www.aclu.org/sites/default/files/field_document/059_bail_report_2_1.pdf.

consumers is also not monitored or enforced by DFS. The additional terms and conditions may be extremely onerous but their enforcement by bounty hunters remains a legal grey area. In practice, bail bonds act as extortion—sometimes aided by violence—for an individual’s freedom.⁵ Rampant abuse exists in part because bail bonds companies’ customers are among the most marginalized and disempowered New Yorkers and regulators have largely ignored this industry.⁶ That said, predation is endemic to the industry and our criminal legal system’s reliance upon it, as even those transactions that are perfectly legal involve a significant transfer of scare funds from mostly low-income families to for-profit corporations.

Client Examples

These are just a handful of examples of the type of abuse and exploitation that our clients’ families face every day in Brooklyn when they seek a commercial bail bond for their loved one.

Ms. J went to Marvin Morgan Bail Bonds in Brooklyn to get her son out of Rikers Island. She was particularly nervous for him because it was his first arrest. The bond was set at \$1,000, and according to state law, the company was allowed to charge her \$100 in “premium or compensation” that she would never get back, regardless of the outcome of the case. The company instead charged her \$300, comprised of \$100 for the premium and \$200 in “courier fees” to deliver the paperwork. The courier, Lightning Courier Service Inc, is registered with the New York State Department of State at the same address as Marvin Morgan Bail Bonds. (Other BDS clients have paid \$1,000 in courier fees, including at least one who paid that amount to Lightning Courier Service at Marvin’s.) Marvin’s did not bail her son out of Rikers for five days. According to DFS, there is no statutory requirement that a bail bonds agent actually bail anybody out, and there is certainly no deadline by which they must act as they are paid to do. Finally, the day before Ms. J’s son was set to appear in court, he was bailed out. Our client went to his hearing and his case was dismissed. Nonetheless, Ms. J’s money will almost certainly not be returned to her. She has filed a complaint with DFS, but, like all commercial bail customers, she signed a large contract in a time of crisis, was not given a copy, and might have signed a document that, lawfully or not, contained provisions regarding the fees she paid.

\$300 is a lot of money for the many extremely low-income New York families who enter our criminal justice system. But Ms. J’s loss was relatively small compared to that of other clients who have recently complained to us.

⁵ See Jessica Silver-Greenberg & Shaila Dewan, “When Bail Feels Less Like Freedom, More Like Extortion,” *NY Times*, March 31, 2018, available at <https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html>.

⁶ New York City Bar, *Report by the Criminal Justice Operations Committee, Criminal Courts Committee and Corrections and Community Reentry Committee: Recommendations Concerning the Bail Bond Industry in the State of New York* (2017), available at http://s3.amazonaws.com/documents.nycbar.org/files/201744-BailBondIndustryNYS_FINAL_4.26.17.pdf.

Ms. W went to ABC Bail Bonds in Brooklyn to get her son, who suffers from serious mental illness and addiction, out of Rikers. She paid \$3,560 in premiums and fees on a \$50,000 bond, or \$300 over the legal ceiling. She also provided the deed to her house and paid \$5,000 in collateral. Soon after her son was released, however, he was involuntarily committed to a state psychiatric hospital and missed a “check-in” with the bail company. Rather than call Ms. W and ask for her son’s whereabouts, the company “apprehended” him from the hospital, returned him to jail, and exonerated the bail in a non-adversarial hearing. They also kept Ms. W’s \$3,560, along with her \$5,000, which it took the liberty of converting from collateral into an “apprehension fee.” Ms. W complained to DFS and sought return of the money, but the agency rejected her complaint, sending a copy of a check made by the bail bond agent with a different person’s name in the memo.

One of our social workers recently accompanied a client, **Ms. S**, to Marvin Morgan Bail Bonds to observe the process of securing their services to get her son out of jail. The company charged her an illegally high sum, but she had called around and this company was the cheapest. Informed that the compensation was illegal, she asked, “What choice do I have?” She signed a 24 -page contract and paid as charged, including a \$1,000 courier fee to Lightning Courier Service Inc.

II. THE NEED FOR COMPREHENSIVE BAIL REFORM

Money bail is not a fair, effective, or necessary means to ensure a defendant’s return to court; the success of our charitable bail funds, whose clients have no financial “skin in the game,” proves this to be true. The Brooklyn Community Bail Fund has paid bail for more than 2600 New Yorkers since 2015 and 95 percent of their clients have returned to court for all of their court dates.⁷ For this reason, unsecured bonds, for which defendants pay nothing upfront, should be the norm under the existing bail statute. To the extent that courts and District Attorneys continue to require some form of upfront money bail, and continue to be permitted to do so under the law, there is no need to rely on commercial bonds. The better option is for people charged with a crime to pay a bond directly to the court, which would return that money in full if they are not convicted of a crime, or all but 3% if they are convicted, as long as they make their court dates. This has been the practice in Massachusetts for more than thirty years, which has effectively abolished the for-profit commercial bail bonds industry in that state.⁸ This option exists in New York’s current bail statute, though most judges rarely if ever order partially secured bonds. Commercial bail is actually banned in Illinois, Kentucky, Oregon, Wisconsin, and the District of Columbia, and pending legislation in New York would add our state to this list.^{9,10}

⁷ Brooklyn Community Bail Fund, <https://brooklynbailfund.org/>.

⁸ Fred Contrada, “Bail bondsmen are a thing of the past in Massachusetts,” MASS LIVE, March 25, 2014, available at https://www.masslive.com/news/index.ssf/2014/03/bail_bondsmen_are_a_thing_of_t.html.

⁹ Alysia Santo, *When Freedom Isn’t Free*, THE MARSHALL PROJECT, Feb. 23, 2015, available at <https://www.themarshallproject.org/2015/02/23/buying-time#.QBLGtAkcl>; see also Justice Policy Institute, *For Better or for Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice* 4 (Sept. 2012), available at

Commercial bail is a twisted form of insurance; consumers assume all of the risk and pay substantial premiums and fees. Frankly, this industry would not be allowed to exist were it not principally used by marginalized people. According to Comptroller Stringer, “in the last year alone...the private bail bond industry extracted between \$16 million and \$27 million in nonrefundable fees from New York City defendants and their families.” These are predominately low-income families of color, many forfeiting rent or food money to free loved ones from jail.

Until recent enforcement actions by the New York City Department of Consumer Affairs (DCA), DFS was the only watchdog for the industry. Complaints that we and our clients have submitted in the last several years have never yielded any sanctions and, more importantly, it is not clear that DFS has any interest in making whole those who have been victimized.

In truth, it is not only impacted individuals and families who are left feeling powerless when courts order commercial bail. As a public defender, I have little advice to give my clients and their loved ones with respect to bail bonds businesses. They want referrals, but no company can be trusted in this lax regulatory environment. All I can do is provide them with a pamphlet on bail paying that our office helped create with the Brooklyn Community Bail Fund through the Center for Urban Pedagogy, and strongly urge them to get a copy of contracts and receipts. With liberty on the line, and sometimes just hours to pay before DOC’s bus is loaded and leaving the courthouse for Rikers Island, there is little opportunity to challenge bail bonds businesses’ wrongdoing. The City and State must take action, and courts should cease ordering commercial bail. This industry should be prohibited in the State of New York, as it is in other states.

III. THE STATE’S FAILURE TO REGULATE COMMERCIAL BAIL BONDS

Bail bond businesses commonly charge illegal fees and premiums in excess of the cap, yet DFS does not affirmatively take action against them and, at least in cases that we have referred the agency, does not even take reactive action. Companies commonly fail to post bail in a timely manner, leaving loved ones on Rikers Island for days, yet a representative of DFS once told my colleague that such delays are legal and, in fact, a bail bonds agent does not ever have to actually bail anyone out, under the law. They may convert money collected collateral into an unrefundable fee, or otherwise misuse this money. They may impose any and all conditions, as a for-profit entity, on New Yorkers’ liberty and a condemn people to jail for the most minor of violations while keeping some or all of their money. Most importantly, there is no effective mechanism for those who have been overcharged by bail bonds businesses to be made whole.

http://www.justicepolicy.org/uploads/justicepolicy/documents/for_better_or_for_profit_executive_summary.pdf.

¹⁰ S.8146 (Benjamin)/A.10394 (Blake), available at <https://www.nysenate.gov/legislation/bills/2017/s8146>.

Absent any meaningful consumer protections from state regulators, the community is left to try to protect itself. Unfortunately, once we, as defense attorneys, identify a bad actor, we have no way of knowing which other storefront locations are operated by that actor. Moreover, even when a bad actor is pushed out, as happened in one case after decisive action by DCA, other bad actors are licensed and ready to take their place. In reality, there are no bail bond companies that we feel comfortable recommending to our clients or their families.

IV. CONCLUSION

Brooklyn Defender Services' recognizes and on a daily basis witnesses the deeply entrenched judicial practice of cash bail or bond as the only option for pre-trial release that reinforces the market for unscrupulous bail bondsmen. New York must shift the culture towards one that does not punish a person accused of a crime, but allows them to maintain their innocence unless proven guilty. Commercial bail is a gross distortion of justice. These patterns of abuse bolster our advocacy for abolishing commercial bail.

Thank you for your consideration of my comments and recommendations.

If you have any questions regarding my testimony, or any issue, please contact Jared Chausow in my office at jchausow@bds.org or (718) 254-0700 Ext. 382.

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