



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Catherine Gonzalez, Staff Attorney

BROOKLYN DEFENDER SERVICES

**Written with: Saye Joseph, Policy Associate, and Jared Chausow, Senior Policy
Specialist**

Presented before

The New York City Council

Committees on the Justice System and Consumer Affairs & Business Licensing

May 2, 2018

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, or facing child welfare allegations or deportation. BDS also provides a wide range of other services to our clients, including help with housing, education, employment and immigration. I thank the City Council Committee on Justice and the Committee on Consumer Affairs & Business Licensing for this opportunity to testify about the immense harm of commercial bail bonds on our clients and their families and communities. We support Intro 510 and 724 and urge the Council to pass these bills to mitigate some of this harm and increase transparency in bail bonds transactions. Ultimately, the City should work toward abolishing this predatory and unnecessary industry. My testimony will center the stories of the people we represent as well as some recommendations to improve the bills.

Recommendations:

Intro 510 should be amended to require that bail bond businesses' posted notices stipulate, in clear language, that the compensation cap applies to total compensation, not just premiums. The fines must be significantly increased if they are to have any effect. In addition, complaints submitted to the Department of Consumer Affairs (DCA) should be referred to all applicable agencies, rather than just the NYPD, and DCA should publicly report on referrals and outcomes. Lastly, the legislation should create an effective mechanism for those who have been victimized by bail bonds businesses to be made whole, including through restitution with treble damages and attorneys' fees.

Intro 724 should be amended to require bail bond businesses to inform consumers of financial risks, including circumstances in which any funds or property provided as collateral might be retained by the business. The bill should also stipulate narrowly-tailored authorized uses of collateral, as there are currently no meaningful restrictions.

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 City to help make that a reality. There is no place for for-profit actors in determinations of liberty, especially during the pre-trial period when people are presumed innocent.

Though New York's bail statute offers 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 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.) The Lippman report shows that judges and prosecutors rarely spend any time thinking of the defendant's ability to pay.¹ 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 \$100.² Convicted of no crime, 9,000 people are detained in New York City jails until and unless they buy their freedom from a third-party whose only motive is profit. 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. This portion, called a "premium," is capped according to a formula in the bail statute, though many if not most commercial bail bonds charge premiums that exceed the cap, in part because customers are among the most marginalized and disempowered New Yorkers and regulators have largely ignored this industry.³ Importantly, the cap applies to "premium or compensation." In addition to losing the premium,

¹ Independent Commission on New York City Criminal Justice and Incarceration Reform. (2017). *A More Just New York City*. NYC.

² Burdeen, C. F. (2016, April 12). The Dangerous Domino Effect of Not Making Bail. *The Atlantic*.

³ The Criminal Justice Operations Committee, Criminal Courts Committee and Corrections and Community Reentry Committee. (2017). *Recommendations Concerning the Bail Bond Industry in the State of New York*.

these agreements often include additional terms and conditions, fees, surveillance, and/or property loss, if assets were put up as collateral. Any such additional monetary charges, excluding collateral that is slated to be returned, are illegal, but are routinely charged by the bail bondsman. These illegal charges are not regulated in my experience. Additional terms and conditions, which may be extremely onerous but their enforcement remains a legal grey area. In practice, bail bonds act as extortion—sometimes aided by violence—for an individual’s freedom.

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. 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 options 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.

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.

For the remainder of the period in which this industry continues to exist, it must be much more tightly regulated. Until recent enforcement actions by DCA, the New York State Department of Financial Services was the only watchdog for the industry, and has abnegated its responsibilities. Complaints that we and our clients submit have never yielded any sanction of the worst actors and, more importantly, it is not clear they have 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.

BDS supports Intro 510 (CM Lancman) - A Local Law to amend the administrative code of the city of New York, in relation to fees charged by bail bondsmen.

Intro 510 would require that bail bond businesses conspicuously post the state’s formula for the cap on premiums. It also requires the Department of Consumer Affairs (DCA) to establish a complaint mechanism for illegal overcharges by bail bonds businesses as well as refer alleged

violations to the New York Police Department for investigation. This bill could begin to protect New Yorkers from the unscrupulous practices of bail bonds businesses. However, it should be amended to require that bail bond businesses' posted notices stipulate, in clear language, that the cap applies to total compensation, not just premiums. So-called fees currently charged by many bail bond businesses, in excess of the cap, are illegal and must be recognized as such. Also, the fines must be significantly increased if they are to have any effect. Bail bond businesses regularly make hundreds if not thousands of dollars in illegal fees; a \$250 fine would likely be absorbed as the cost of doing crooked business. In addition, complaints submitted to the Department of Consumer Affairs (DCA) should be referred to all applicable agencies, rather than just the NYPD, and DCA should publicly report on referrals and outcomes disaggregated by enforcement agency. Lastly, the legislation should create an effective mechanism for those who have been overcharged by bail bonds businesses to be made whole, including through restitution with treble damages and attorneys' fees.

BDS supports Intro 724 (Speaker Johnson, CM Williams, CM Lancman, CM Van Bramer, and CM Dromm) - A local law to amend the administrative code of the city of New York, in relation to requiring that bail bond businesses make certain disclosures.

The for-profit bail bonds industry has grown alongside mass incarceration and mass criminalization. The industry has morphed into one with little regulation, and predatory pricing and contracting, which negatively impacts low-income people. Unfortunately, our clients who have no option but to rely on commercial bail bonds become involved in a complex transfer of money and risk. Commercial bail bonds involve "surety" bonds that are primarily financed by large global insurers.⁴ Unlike traditional insurance (car, home, etc.), such surety bonds place the risk and requirement to pay the full bond amount, not just the premium amount, onto the family. However, these transactions occur in several layers of opaque structures between corporate entities, bond-insurance operations, and bail bonds' storefronts, all of which is unknown to our clients or the public.

Intro 724 would require DCA to produce a "consumers' bill of rights regarding bail bond businesses" in multiple languages. It would further require bail bond businesses to provide consumers with a flier containing the same information, and conspicuously post signage with basic but important identifying information regarding the licensed bond agents, including all addresses that operate under their license. Much of this information would also be included in all receipts and contracts. Lastly, it would require that bail bond businesses provide each consumer a copy of any document related to the provision of its services that the consumer signed, including but not limited to any contract. For the benefit of our clients and the public, in addition to the proposed disclosures, we recommend that this bill require bail bond businesses to inform consumers of financial risks, including circumstances in which any funds or property provided as collateral may be retained by these businesses. The bill should also stipulate narrowly-tailored authorized uses of collateral, as there are currently no meaningful restrictions. As noted earlier, the bond industry operates within murky transactions, and far too often are our clients entering predatory contracts in moments of desperation when they are not fully aware of their rights and liability.

⁴ ibid.

Client Examples

Ms. J went to Marvin Morgan Bail Bonds 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. He 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, as evidenced by the majority of the population in Rikers enduring pre-trial incarceration because they cannot afford \$500 or less, but Ms. J’s loss was relatively small compared to that of other clients who have recently complained to us. **Ms. W** went to ABC Bail Bonds 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.”

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.

We recognize and on a daily basis witness 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, however, we hope to shift the culture towards one that does not punish a person being accused of a crime, but allows them to maintain their innocence unless proven guilty. Commercial bail is a gross distortion of justice. These perpetual patterns bolster not only our support for Intro 724 and 510, but also our advocacy towards 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 Saye Joseph in my office at scjoseph@bds.org or (718) 254-0700 Ext. 206.