



Memorandum of Support

A4880 (Blake)

An Act to amend the insurance law, in relation to charitable bail organizations

February 9, 2017

Brooklyn Defender Services (BDS) supports A4880 (Blake) which would limit restrictions on Charitable Bail Organizations (CBOs) therefore enabling these non-profit groups to assist more people throughout New York State. BDS is a public defense organization that provides multi-disciplinary and client-centered criminal defense, family defense, immigration and civil legal services, reentry support, social work support and community-based education to tens of thousands indigent Brooklyn residents every year.

Brooklyn Defender Services helped incubate the Brooklyn Community Bail Fundⁱ, which as an independent 501(C)(3) organization has bailed out more than 1,100 defendants who otherwise would have been locked up in City jails prior to the resolution of their case. Many of these defendants were BDS clients, and we have seen firsthand the positive impact CBOs can have on the administration of justice in our borough and throughout New York City.

EXISTING LAW

Under existing New York State law, CBOs are able to deposit money as bail in the amount of two thousand dollars or less for a defendant charged with one or more misdemeanors, provided, however, that such organization shall not execute as surety any bond for any defendant. The current law also limits funds to operate in only one county, with a carve-out for CBOs located in New York City to operate within all five boroughs.ⁱⁱ

In 2012, when Charitable Bail Organizations were added to the Insurance Law to clarify rules about their activities, the inability of people whose bail was set higher than \$2,000 to meet this financial condition was well-documented. Nevertheless this limit was put in place, perhaps because CBOs were a new type of entity and their activities had never been regulated before.

PROPOSED AMENDMENTS

Due to the success of the CBOs currently in operation – both in their ability to post bail for indigent defendants thus reducing the number of people facing the traumas of incarceration in the absence of any finding of guilt for a specific crime, and in ensuring the return to court rates – it serves the State well to consider lifting some of the restrictions initially placed on these organizations in 2012.ⁱⁱⁱ

In the second quarter of 2016, according to the Mayor’s Office of Criminal Justice, 9,415 people landed on Rikers Island despite bail amounts under \$2,500.^{iv} (The upper limit for CBOs is currently \$2,000, but NYC data does not provide for statistics at that threshold). During that same time period, there were an additional 3,873 people who were incarcerated pre-trial in NYC because they were unable to post bail between \$2,500 and \$5,000. Extrapolated out to a full year, this means that the new bill could impact at least 15,492 people, in just New York City alone, a significant number. Our understanding of bail-setting practices outside New York City is that bails are comparatively higher. Thus we anticipate the higher threshold having a significant impact outside New York City as well.

Importantly, the proposed legislation would permit CBOs to post bail on cases with a top charge of a violation or a felony. At the moment when bail is set, the judge is not remanding a person, but setting some conditions that if met, would give the judge comfort that the defendant would return to court for their future court appearances. The purpose of bail is not to hold someone in jail until the conclusion of their case, though this occurs too often all across the state. The purpose of bail is release. Therefore CBOs should not arbitrarily be limited to posting bail for misdemeanors, but should be made available to those people who cannot afford the financial conditions set by a judge, no matter the charge. .

Pre-trial incarceration is a grave injustice. Being in jail for just one day can lead to a lifetime of harmful consequences from which some of our clients never recover. There are dramatic racial disparities in our pre-trial systems. Requiring people to use financial resources to buy their way out of jail is discriminatory against those without financial means. Lastly, there is no evidence to suggest that requiring financial conditions of release actually increases the rate at which people return to court. **Because the amendments proposed in A4880 will provide greater opportunities for people to remain at liberty while their case is adjudicated, we support this bill.**

ADDITIONAL RECOMMENDATIONS

The bail system in New York State is broken.^v Most problematically prosecutors ask for, and judges order, people to post financial conditions of release that far exceed their ability to pay, even though an individualized assessment of a defendant’s financial capacity to pay is required in the bail statute.. Our bail statute remains one of the most progressive in the country, but the application of the statute is a problem. While we support this bill because it will help people in need, it is not a panacea for all pre-trial problems. Our hope is this bill is one step in a longer

march toward transformational reforms to the way justice is administered during the pre-trial period of a criminal case.

New York is one of just eight states that do not require judges to have legal training.^{vi} This means that the judicial officers interpreting the bail statute, and sending people to jail on financial conditions they cannot afford, may not fully understand the law. It is no surprise that in New York City, where judges are legally trained and experienced, and public defenders are well-resourced, more people are released on their own recognizance, when compared to upstate counties. New York City's jail population declined by half since its peak in 1999 yet other county jail populations, such as Montgomery County's, has swelled. While New York City's pre-trial system is comparatively better, still 60,000 people cycle through the City's jail system each year, the vast majority of whom are their waiting for their case to be adjudicated.^{vii} As CBOs in New York City have shown, many of these people will come back to court if released.

Looking to the future, there is no reason to restrict CBOs to posting only cash bail instead of surety bonds. Here in New York City and across the State, our clients experience wide-ranging fraud and exploitation at the hands of commercial bail bondsmen, who nevertheless continue to benefit from the current practices by the courts in setting Insurance Bond as one of two options for people to meet their financial conditions of release, cash being the other. Although under the statute judges have nine forms of bail they can permit, and no requirement to set *any* form, which would allow defendant's families to make decisions about what form they are capable of posting, in Brooklyn and throughout NYS, Insurance Company Bond and cash are overwhelmingly the most common. If the CBO's are to be able to help more people avoid pre-trial incarceration, there should be a broadening of the scope of their permitted activities.

Thank you very much for your consideration of our comments. If you have any questions, please reach out to Nick Malinowski, nmalinowski@bds.org or 718-254-0700 ext. 269.

ⁱ <https://brooklynbailfund.org/>

ⁱⁱ <http://law.justia.com/codes/new-york/2015/isc/article-68/6805>

ⁱⁱⁱ <https://brooklynbailfund.org/our-results/>

^{iv} <http://www1.nyc.gov/site/criminaljustice/data-analytics/reports.page>

^v https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html?_r=0

^{vi} <https://www.theatlantic.com/politics/archive/2017/02/when-your-judge-isnt-a-lawyer/515568/>

^{vii} http://www1.nyc.gov/assets/doc/downloads/pdf/FY17_1st_QUARTER_2016_demog.pdf