

GOVERNMENT LAW CENTER

2018
Warren M. Anderson
Legislative Breakfast Seminar Series

“Bail – Are There Better Alternatives?”

February 13, 2018



ALBANY LAW SCHOOL

Warren M. Anderson Legislative Breakfast Seminar Series
Presented by the Government Law Center of Albany Law School

February 13, 2018

BAIL – ARE THERE BETTER ALTERNATIVES?

Table of Contents

Speakers Biographies

Materials

Sections of the New York State Criminal Procedure Law Article 500

FY 2019 New York State Executive Budget

Article VII Legislation

Public Protection and General Government

Part C Bail Reform

A More Just New York City: Report of the Independent Commission on New York City Criminal Justice and Incarceration Reform

Supreme Court Processing of DOC Detainees

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SPEAKER BIOGRAPHIES

ALPHONSO B. DAVID, ESQ., is an attorney, law professor, and policy advisor with significant litigation and management experience in the public, private, and not-for-profit sectors. In 2015, Mr. David was appointed by New York State Governor Andrew Cuomo to serve as Counsel to the Governor. In this role, Mr. David functions as the Governor's chief counsel and principal legal advisor, and oversees all significant legal and policy deliberations affecting New York State, including evaluating proposed legislation; implementing laws and policies; and formulating the State's posture in both affirmative and defensive litigation. Prior to his appointment as the Governor's Chief Counsel, Mr. David served for four years in the Governor's cabinet as the Deputy Secretary and Counsel for Civil Rights, the first position of its kind in New York State. In this capacity, he was responsible for a full range of legal, policy, legislative, and operational matters affecting civil rights and labor throughout the State. Mr. David also previously served as Special Deputy Attorney General for Civil Rights for the Office of the New York State Attorney General, where he managed up to a dozen Assistant Attorneys General on a variety of investigations and affirmative litigation, including employment and housing discrimination, fair lending, reproductive rights, and anti-bias claims. Further, he previously served as Deputy Commissioner and Special Counselor at the New York State Division of Human Rights. Prior to working in the public sector, Mr. David served as a staff attorney at the Lambda Legal Defense and Educational Fund. At Lambda Legal, Mr. David litigated precedent-setting civil rights cases across the nation affecting lesbian, gay, bisexual, and transgender individuals as well as those living with HIV. He handled both affirmative and defensive matters relating to marriage, parenting rights, discrimination in schools, and access to health care. In addition, Mr. David served as a litigation associate at the law firm Blank Rome LLP. He began his legal career as a judicial clerk to the Honorable Clifford Scott Green in the United States District Court for the Eastern District of Pennsylvania. For the past decade, Mr. David has served as an Adjunct Professor of Law. He began his work in academia with Fordham University Law School and most recently with Benjamin N. Cardozo School of Law, teaching "Constitutional Law: Sexuality and the Law." Mr. David is a graduate of the University of Maryland and Temple University School of Law. He is admitted to practice in New York.

MARTIN F. HORN is Distinguished Lecturer at the John Jay College of Criminal Justice of the City University of New York. For nearly seven years prior to joining the faculty there in September 2009, he served simultaneously as Correction Commissioner and Probation Commissioner for the City of New York. Mr. Horn has more than forty years of experience working in corrections and community supervision. He previously served as Secretary of Corrections for the Commonwealth of Pennsylvania. For many years, Mr. Horn was the Executive Director of New York State's paroling authority. He has been a warden and has taught, written, and spoken extensively about

issues of prison and parole reform throughout his career. Mr. Horn received an MA in criminal justice in 1974 from the John Jay College of Criminal Justice of the City University of New York. He received a BA in government in 1969 from the Franklin & Marshall College in Lancaster, PA.

JUSTINE (TINA) M. LUONGO, ESQ., is the Attorney-in-Charge of the Criminal Defense Practice of the Legal Aid Society. As the Chief Defender, Ms. Luongo is responsible for leading a passionate and dedicated staff of more than 1100 individuals responsible for representing more than 200,000 people in their trial, post-conviction, and parole matters. In addition, Ms. Luongo oversees two law reform units that are involved in class action litigation and legislative advocacy that have forced critical reforms in the criminal justice system. During her time in this role, the Legal Aid Society opened the first defense-focused Digital Forensic Unit ever, launched both the Cop Accountability Project and the Decarceration Project focusing on bail, and increased the capacity of every trial office to provide the highest quality representation to clients. Ms. Luongo is dedicated to increasing the diversity of the public defense workforce and is integrally involved in the Legal Aid Society's diversity initiative. She has been an active voice in the movement to foster best practices in public defense and continues to be involved in the dialogue about how public defenders can create systemic change, as well as be zealous advocates for their clients. After graduating from Brooklyn Law School, Ms. Luongo began her Legal Aid career in September 2002 as a staff attorney in the New York County trial office of the Criminal Defense Practice. In 2007, she was promoted to Supervising Attorney in the same office, where she continued to directly represent clients, as well as train and manage a team of attorneys, paralegals and investigators. In May 2011, Ms. Luongo was hired as the Deputy Attorney-in-Charge of the Criminal Defense Practice. Prior to joining the Legal Aid Society, she served as the Vice President of Operations for a national gang intervention and prevention nonprofit organization known as the Council for Unity. Throughout her careers at both organizations, Ms. Luongo has focused on improving the lives of individuals marginalized by race, sexual orientation, gender identity, and socio-economic status. Ms. Luongo is a Vice President-at-Large of the ABA Criminal Justice Council, the President of the Chief Defender Association of New York, a member of the NLADA Defender Council, and a Steering Committee member of the National Association for Public Defense. She is a graduate of Brooklyn Law School and is admitted to practice in New York.

SCOTT D. MCNAMARA, ESQ. is the Oneida County District Attorney. He started his career in the office as an Assistant District Attorney in 1992. He has held numerous positions within the office, including Bureau Chief of the Narcotics Unit, Chairperson of the Death Penalty Committee, and First Assistant District Attorney. In 2007, Mr. McNamara was elected District Attorney, and he has since been re-elected twice. During his tenure, Mr. McNamara started many initiatives, including an economic crime unit; a conviction integrity unit; a second chance program; and the addition of a community liaison to his office. Mr. McNamara is currently a member of the New York State Commission on Forensic Science, and he is the President of the District Attorney's Association of the State of New York (DAASNY). He recently served on a committee with the National Academy of Sciences that studied eyewitness identification and issued a report titled *Identifying the Culprit: Assessing Eyewitness Identification*. Mr. McNamara is a graduate of Syracuse University and Vermont Law School. He is admitted to practice in New York.

RICHARD RIFKIN, ESQ., was born in Brooklyn on February 21, 1941 and attended New York City public schools. In 1962 he received a B.A. degree, magna cum laude, from Washington and Jefferson College, having been elected to Phi Beta Kappa, and in 1965, he was awarded an LL.B. degree by Yale Law School. Mr. Rifkin was admitted to the Bar and entered into the private practice of law in 1966. From 1970 to 1973, he served during the session as staff counsel to Assemblyman Leonard Stavinsky. He was appointed Counsel to the Bronx Borough President in 1973. In 1979, Attorney General Robert Abrams appointed Mr. Rifkin Deputy First Assistant Attorney General; and in 1984, Counsel to the Attorney General; and in 1991, First Assistant Attorney General. From 1994 to 1999, Mr. Rifkin served as Executive Director of the State Ethics Commission. He was appointed in 1999 by Attorney General Spitzer as Deputy Attorney General for the office's State Counsel Division. In 2007, he was appointed Special Counsel to the governor, where he remained until June 2008, when he assumed his current position of Special Counsel to the New York State Bar Association. Since 1984, Mr. Rifkin has served as a member of the Chief Administrative Judge's Advisory Committee on Civil Practice. He has served on various committees of the New York City Bar Association and New York State Bar Association, and was, for two terms, a member of the House of Delegates of the latter.

DONNA YOUNG is a Professor of Law at Albany Law School. Prior to joining the faculty at Albany Law School, Professor Young worked in litigation at Cornish Roland, a labor law firm in Toronto, Canada, as a consultant at the Ontario Human Rights Commission examining the procedural and adjudicatory treatment of race discrimination cases in Canada, and in the Legal Department at the City of New York, Mayor's Office of Labor Relations. She taught as an Associate in Law at Columbia Law School in 1994–1996 while obtaining an LLM. While at Albany Law, she was awarded a Fellowship from Cornell Law School's Gender, Sexuality, and Family Project and was a Visiting Scholar at Osgoode Hall Law School's Institute of Feminist Legal Studies in Toronto. Professor Young has been a Visiting Scholar at the Facolta di Giurisprudenza, Universita Roma Tre in Rome, Italy, and a consultant to the International Development Law Organization in Rome during which time she traveled to Uganda to conduct fieldwork on the interaction of women's property rights and HIV/AIDS. Professor Young researches in the areas of comparative labor/employment law, feminist legal theory, critical race theory, and international labor and human rights law. She has been invited to present her work at conferences in the US, Canada, Sri Lanka, Italy, Germany, Hungary, France, Mexico, Puerto Rico, and the UK. She teaches Criminal Law, Employment Regulation, Federal Civil Procedure, and Gender and Work. During 2014–2015 she was a staff member at the AAUP's Department of Academic Freedom, Tenure and Governance, in Washington, DC. She has been a member of the AAUP's Committee A on Academic Freedom and Tenure since 2015. Professor Young is an affiliated faculty member at the University at Albany's Department of Women's, Gender, and Sexuality Studies. She received a BSc from the University of Toronto; an LLB from Osgoode Hall Law School of York University; and an LLM from Columbia University School of Law, where she served as associate editor of the *Columbia Journal of Transnational Law*. Professor Young is admitted to practice in New York.

Sections of the New York State
Criminal Procedure Law
Article 500

NY CLS CPL § 500.10

Current through 2018 Chapter 1

New York Consolidated Laws Service > Criminal Procedure Law > Part THREE Special Proceedings and Miscellaneous Procedures > Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment > Article 500 Recognizance, Bail and Commitment—Definition of Terms

§ 500.10. Recognizance, bail and commitment; definition of terms

As used in this title, and in this chapter generally, the following terms have the following meanings:

1. “Principal” means a defendant in a criminal action or proceeding, or a person adjudged a material witness therein, or any other person so involved therein that he may by law be compelled to appear before a court for the purpose of having such court exercise control over his person to secure his future attendance at the action or proceeding when required, and who in fact either is before the court for such purpose or has been before it and been subjected to such control.
2. “Release on own recognizance.” A court releases a principal on his own recognizance when, having acquired control over his person, it permits him to be at liberty during the pendency of the criminal action or proceeding involved upon condition that he will appear thereat whenever his attendance may be required and will at all times render himself amenable to the orders and processes of the court.
3. “Fix bail.” A court fixes bail when, having acquired control over the person of a principal, it designates a sum of money and stipulates that, if bail in such amount is posted on behalf of the principal and approved, it will permit him to be at liberty during the pendency of the criminal action or proceeding involved.
4. “Commit to the custody of the sheriff.” A court commits a principal to the custody of the sheriff when, having acquired control over his person, it orders that he be confined in the custody of the sheriff during the pendency of the criminal action or proceeding involved.
5. “Securing order” means an order of a court committing a principal to the custody of the sheriff, or fixing bail, or releasing him on his own recognizance.
6. “Order of recognizance or bail” means a securing order releasing a principal on his own recognizance or fixing bail.
7. “Application for recognizance or bail” means an application by a principal that the court, instead of committing him to or retaining him in the custody of the sheriff, either release him on his own recognizance or fix bail.

8. "Post bail" means to deposit bail in the amount and form fixed by the court, with the court or with some other authorized public servant or agency.
9. "Bail" means cash bail or a bail bond.
10. "Cash bail" means a sum of money, in the amount designated in an order fixing bail, posted by a principal or by another person on his behalf with a court or other authorized public servant or agency, upon the condition that such money will become forfeit to the people of the state of New York if the principal does not comply with the directions of a court requiring his attendance at the criminal action or proceeding involved or does not otherwise render himself amenable to the orders and processes of the court.
11. "Obligor" means a person who executes a bail bond on behalf of a principal and thereby assumes the undertaking described therein. The principal himself may be an obligor.
12. "Surety" means an obligor who is not a principal.
13. "Bail bond" means a written undertaking, executed by one or more obligors, that the principal designated in such instrument will, while at liberty as a result of an order fixing bail and of the posting of the bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event that he fails to do so the obligor or obligors will pay to the people of the state of New York a specified sum of money, in the amount designated in the order fixing bail.
14. "Appearance bond" means a bail bond in which the only obligor is the principal.
15. "Surety bond" means a bail bond in which the obligor or obligors consist of one or more sureties or of one or more sureties and the principal.
16. "Insurance company bail bond" means a surety bond, executed in the form prescribed by the superintendent of financial services, in which the surety-obligor is a corporation licensed by the superintendent of financial services to engage in the business of executing bail bonds.
17. "Secured bail bond" means a bail bond secured by either:
 - (a) Personal property which is not exempt from execution and which, over and above all liabilities and encumbrances, has a value equal to or greater than the total amount of the undertaking; or
 - (b) Real property having a value of at least twice the total amount of the undertaking. For purposes of this paragraph, value of real property is determined by either:
 - (c) dividing the last assessed value of such property by the last given equalization rate or in a special assessing unit, as defined in article eighteen of the real property tax law, the appropriate class ratio established pursuant to section twelve hundred two of such law of the assessing municipality wherein the property is situated and by deducting from the resulting figure the total amount of any liens or other encumbrances upon such property; or
 - (ii) the value of the property as indicated in a certified appraisal report submitted by a state certified general real estate appraiser duly licensed by the department of state as provided in section one hundred sixty-j of the executive law, and by deducting from the appraised value the total amount of any liens or other encumbrances upon such property. A lien

report issued by a title insurance company licensed under article sixty-four of the insurance law, that guarantees the correctness of a lien search conducted by it, shall be presumptive proof of liens upon the property.

18. “Partially secured bail bond” means a bail bond secured only by a deposit of a sum of money not exceeding ten percent of the total amount of the undertaking.
19. “Unsecured bail bond” means a bail bond, other than an insurance company bail bond, not secured by any deposit of or lien upon property.
20. “Court” includes, where appropriate, a judge authorized to act as described in a particular statute, though not as a court.

History

Add, L 1970, ch 996, § 1, eff Sept 1, 1971; amd, [L 1992, ch 316, § 26](#), eff Nov 1, 1992; [L 2011, ch 62, § 104](#) (Part A), eff Oct 3, 2011; [L 2011, ch 305, § 1](#), eff Aug 3, 2011.

Annotations

Notes

2011 Recommendations of the Advisory Committee on Criminal Law and Procedure:

The Committee recommends that [section 500.10 of the Criminal Procedure Law](#) be amended to add an additional, more streamlined, way to determine the value of real property used in a secured bail bond.

A “secured bail bond” is a bail bond secured by either personal property or “real property having a value of at least twice the amount of the undertaking” ([CPL 500.10\(17\)](#)). Under the present statute, valuing real property involves a complex process that uses the “equalization rate or special assessing unit . . . of the assessing municipality wherein the property is situated.” This rate varies from municipality to municipality and is not readily understood by criminal practitioners or court personnel staffing local criminal courts. At a minimum, the procedure requires the obligor to file an affidavit with the court and to present proof from the city register or county clerk where the property is located showing the last assessed value, the lot, the block and the owner. The obligor must also produce the deed, a copy of the last mortgage statement and a print out from an appropriate clerk showing that there are no tax liens or other encumbrances on the property. Where the real property is not located in the same county as the court, delays are common as the necessary paper work is obtained by the obligor and then verified by the court.

One consequence of this procedural complexity is that many defendants resort to using a bail bondsman. Bail bondsmen are not required to use any particular method to determine the value of the collateral, and there is no requirement that the property be worth twice the value of the bail that will be posted (*see* [People v. Imran, 193 Misc.2d 746 \(Crim Ct, NY County 2002\)](#)). Thus, by having a poorly understood system to value real property, defendants and their families are often subject to significant cost simply to avoid the bureaucratic hardship of posting real property with the court.

This measure would add a second method for determining the value of real property when posting a securing bail bond. It allows an obligor to file an appraisal report certified by a duly licensed state certified general real estate appraiser as evidence of the value of the real property. Moreover, it allows the obligor to present a lien search from a licensed title insurance company as presumptive proof of any liens or encumbrances on the property.

Commission Staff Notes:

This section (the only one in the Article) is addressed exclusively to the task of providing a language in which the subject of bail and its ramifications may be intelligently drafted and discussed. Some of the defined terms, though appearing elementary on the surface, are beclouded with uncertainty in their Criminal Code setting. This is true even of an ostensibly simple word such as “bail” (subd 9), which, though ordinarily assumed in the Code to be something in the nature of property or an undertaking posted to assure a defendant’s court appearance (e. g., Crim C § 550), is also referred to as the surety or other person who assumes the undertaking (e. g., id. § 551).

Without treating each of the twenty term definitions of this section, it may be pointed out that, from the standpoint of substantive innovation, the two most important ones are “partially secured bail bond” and “unsecured bail bond” (subds 18, 19), the meanings and significance of which are discussed in connection with § 520.10.

Amendment Notes:

2011. Chapter 62, § 104 (Part A) amended:

Sub 16 at figs 1 and 2 by substituting “superintendent of financial services” for “superintendent of insurance”.

2011. Chapter 305, § 1 amended:

By designating entire sub 17, par (b) as sub 17, par (b), opening par and subpar (i).

Sub 17, par (b), opening par by adding the matter in italics.

Sub 17, par (b), subpar (i) by adding the matter in italics.

By adding sub 17, par (b), subpar (ii).

Commentary

PRACTICE INSIGHTS:

Using Creative Bail Strategies to Secure Defendant’s Release.

By Daniel Nobel, Esq., Member of New York Bar.

General Editor, John M. Castellano, Esq., Member of New York Bar.

INSIGHT

Defense counsel should seek and use the full range of available options in attempting to secure a defendant's release through bail. To this end, counsel should consider not only the amount of bail, but the form as well. Cash bail is always an option and is generally preferred when the necessary funds can be raised. But where funds are limited, significant relief may be available to the defendant if counsel prevails in utilizing a bail bond that substitutes a financial obligation, by the defendant or someone acting on the defendant's behalf, for a cash deposit that may not be within the means of the defendant.

ANALYSIS

[CPL § 500.10](#) defines the terms used in CPL Article 520 regarding the different forms of bail bonds that are authorized by the CPL. These definitions are divided into two categories: one defining the role of individuals who make a financial commitment to satisfy bail conditions and the other defining the forms that such a commitment can assume.

The statute refers to the defendant as the "principal" and a person who executes a bail bond as an "obligor." The term "bail" is the overarching term applicable to cash bail or a bail bond. The term "bail bond" applies to any "written undertaking, executed by one or more obligors" which guarantees a defendant's appearance in court during the pendency of a criminal action. The statute also refers to numerous forms of bail bonds, depending on who is making the financial commitment and whether it is secured or not. Bail bonds may also require compliance with other "orders and processes of the court" that may be incorporated into the securing order. Such conditions might include or exclude certain behaviors, limit a principal's travel or require a principal to avoid contact with designated parties, especially a victim or a witness.

Counsel should always give consideration to posting cash bail rather than using a bond. Cash bail is the better course for several reasons. First, the cash bail amount is ordinarily far less than the amount required for a bond. Judges often set two separate bail amounts, one for cash bail and one for bonds, and make the bond amount much greater than the cash bail. Second, cash bail will be returned at the end of the proceedings as long as the defendant appears as required, while a bail bond can only be obtained by paying a hefty fee, often 10% or more of the face amount of the bond, that will never be returned. Third, in addition to the fee, the bond company will often want to hold substantial additional cash and require promises for the full amount of the bond. As a result, those putting up the money and making the financial commitment required for a bond may lose much more than if cash bail is used. Note that posting cash bail is not a means to escape the scrutiny of assets attendant to a bail bond because [CPL § 520.15\(2\)](#) specifies a form that the person posting cash bail must complete requiring information similar to that necessary for a bail bond. And the person posting cash bail is subject to the same examination in a bail sufficiency hearing under [CPL § 520.30\(1\)](#) as is an obligor.

Bail bonds do present one advantage over cash bail: They can often be obtained with a lesser initial outlay of cash. This is particularly true where the court specifies only one bail amount. That amount may be satisfied either by cash bail or by unsecured bond, and the fee required for the bond plus the additional sums required by the bail bondsman will be less than the full amount of the bail. This calculus may be altered to some degree by the use of credit cards to satisfy cash bail. Credit will frequently be accepted to post bail, pursuant to the authority in [CPL § 520.10\(1\)\(i\)](#), and where sufficient cash and credit are available, this again may be the best option.

Counsel may find that even after informing themselves of the range of options the CPL provides in structuring a bail bond, local jurisdictions have, by custom, marked preferences for one type of bail over other authorized forms. Counsel who appears less often in a particular venue should sharpen his bail application and increase the chances of obtaining an order of recognizance or bail by doing due diligence at the clerk's office or contacting local counsel.

If the defendant cannot post either cash bail or obtain a bond to satisfy the bail conditions, counsel may make a bail application subsequent to the initial arraignment. Most judges will inquire as to what circumstances have changed since the prior application was made, and counsel must be ready to answer this question. In addition, counsel can seek further review of a local criminal court's bail determination in a superior court, under [CPL § 530.30](#). Counsel may also bring a habeas corpus petition in a superior court or in the Appellate Division, but this attempt often fails because counsel must demonstrate that the initial judge setting bail abused his discretion. Even when a reduction in bail is obtained in the superior court, the prosecutor may appeal the decision. Despite these vehicles for review, the original application still presents the best chance for release and counsel should thus attempt to obtain as much information as possible before the arraignment about the funds that can be used to post bail and the availability of a bail bond so that the initial court will set a bail amount that can realistically be met.

Notes to Decisions

Bail bond is security which seeks to assure defendants of appearance in court in criminal proceedings; when bail is accepted by State in lieu of defendant's physical incarceration, defendant is in effect remanded to custody of surety. [People v Public Service Mut. Ins. Co., 37 N.Y.2d 606, 376 N.Y.S.2d 421, 339 N.E.2d 128, 1975 N.Y. LEXIS 2195 \(N.Y. 1975\)](#).

In return for State's release of defendant from jail, bail bond surety pledges itself to assure return of defendant to court; there is moral obligation on part of surety to fulfill such promise. [People v Public Service Mut. Ins. Co., 37 N.Y.2d 606, 376 N.Y.S.2d 421, 339 N.E.2d 128, 1975 N.Y. LEXIS 2195 \(N.Y. 1975\)](#).

Double equity requirement by which distinction is drawn between personal property and real property for purpose of securing bail bond, and which requires that, for real property to be used as security, its net value must be at least twice the total amount of undertaking, is rationally based since (1) to greater extent than personal property, real property is subject to title problems and other hidden defects that can affect value, but which cannot readily be ascertained without expensive, time-consuming procedures, and (2) portion of value of real property may be statutorily exempt from execution. [People ex rel. Hardy v Sielaff, 79 N.Y.2d 618, 584 N.Y.S.2d 742, 595 N.E.2d 817, 1992 N.Y. LEXIS 1531 \(N.Y. 1992\)](#).

Strict equal protection scrutiny would not apply to challenge of double equity requirement of CLS [CPL § 500.10\(17\)](#) by which distinction is drawn between personal property and real property for purpose of securing bail bond, despite contention that minorities are disproportionately affected by bail statutes, since statute contains, on its face, no suspect classification. [People ex rel. Hardy v Sielaff, 79 N.Y.2d 618, 584 N.Y.S.2d 742, 595 N.E.2d 817, 1992 N.Y. LEXIS 1531 \(N.Y. 1992\)](#).

The New York bail system is not unconstitutional under the equal protection and due process clauses of the U. S. Constitution or under the *Eighth Amendment of the U. S. Constitution* and [Article 1 § 5 of the Constitution of the State of New York](#). [*Bellamy v Judges & Justices Authorized to Sit in New York City Criminal Court*, 41 A.D.2d 196, 342 N.Y.S.2d 137, 1973 N.Y. App. Div. LEXIS 4807 \(N.Y. App. Div. 1st Dep't 1973\)](#), *aff'd*, [32 N.Y.2d 886, 346 N.Y.S.2d 812, 300 N.E.2d 153, 1973 N.Y. LEXIS 1232 \(N.Y. 1973\)](#).

Complaint brought by individuals detained while placing criminal charges seeking declaratory judgment that bail system was violative of their constitutional rights could not be brought as a class action as there are individual determinations to be made in every bail application. [*Bellamy v Judges & Justices Authorized to Sit in New York City Criminal Court*, 41 A.D.2d 196, 342 N.Y.S.2d 137, 1973 N.Y. App. Div. LEXIS 4807 \(N.Y. App. Div. 1st Dep't 1973\)](#), *aff'd*, [32 N.Y.2d 886, 346 N.Y.S.2d 812, 300 N.E.2d 153, 1973 N.Y. LEXIS 1232 \(N.Y. 1973\)](#).

The bail provisions of CPL Art 500 are constitutional. *People v Figueora*, [43 A.D.2d 648, 349 N.Y.S.2d 811, 1973 N.Y. App. Div. LEXIS 3088 \(N.Y. App. Div. 3d Dep't 1973\)](#).

In a proceeding in which petitioners moved separately to have bail remitted or exonerated, which arose after petitioners, the parents and grandmother of a defendant in a criminal proceeding, alleged provided security to an insurance company which issued two bail bonds, although petitioners denominated themselves as sureties in the proceedings, a review of the bail bond revealed that defendant's parents did not assume the bail obligation but simply posted security to the insurer and were therefore not sureties under [CPL § 500.10\(11\)](#) and (12), and petitioner's papers indicated that the grandmother simply posted a security to the insurer and did not assume its undertaking; the obligation to produce a defendant or forfeit bail runs from the obligor to the People, and a person who is not a surety but who stands merely as an indemnitor to whom a surety may turn in the event of a forfeiture has no standing to seek remission of bail. *Van Deusen v People*, [97 A.D.2d 924, 470 N.Y.S.2d 770, 1983 N.Y. App. Div. LEXIS 20713 \(N.Y. App. Div. 3d Dep't 1983\)](#), *app. dismissed*, [62 N.Y.2d 605, 1984 N.Y. LEXIS 7739 \(N.Y. 1984\)](#), *app. dismissed*, [62 N.Y.2d 915, 479 N.Y.S.2d 10, 467 N.E.2d 894, 1984 N.Y. LEXIS 4444 \(N.Y. 1984\)](#).

Purpose of requiring a defendant to give bail after arrest is to insure his appearance in court. [*People v Dizdar*, 91 Misc. 2d 23, 397 N.Y.S.2d 340, 1977 N.Y. Misc. LEXIS 2227 \(N.Y. App. Div. 1977\)](#).

Requirement of stay pending appeal that defendant obtain "fully secured surety company bond" in sum of \$100,000 was not properly complied with by filing of \$100,000 bond secured by real property valued at \$150,000, subject to outstanding mortgage lien of \$30,000, as fully secured bond is bond secured by real property having value of at least twice total amount of undertaking. [*People v Sherman*, 132 Misc. 2d 15, 502 N.Y.S.2d 914, 1986 N.Y. Misc. LEXIS 2628 \(N.Y. Sup. Ct. 1986\)](#).

Real property offered on behalf of defendant as security for bail bond, which had net value of \$155,589.80 pursuant to valuation formula set out in CLS [CPL § 500.10\(17\)\(b\)](#), was insufficient to serve as security where defendant's bail was set at \$100,000, since property value was not double amount of bail. [*People v Burton*, 148 Misc. 2d 716, 561 N.Y.S.2d 328, 1990 N.Y. Misc. LEXIS 512 \(N.Y. Sup. Ct. 1990\)](#).

[CPL 500.10 \(17\)](#), which provides that a bail bond may be secured by personal property with a value over and above all liabilities and encumbrances equal to the amount of the undertaking, but requires real property securing a bond to be worth twice the amount of the undertaking, does not violate the equal protection rights of African- Americans and Hispanic-Americans, who allegedly lack liquid assets and

must rely on bonds secured by real property, since the mere conjecture of a denial of equal protection need not, in the absence of evidence of invidious distinctions between classes of citizens, be subject to the strict review scrutiny otherwise required where purposeful unequal treatment or resulting disproportionate harm is alleged. In the absence of a stark pattern that a statute bears more heavily on one race or ethnic group than upon another, impact alone is not determinative of whether there has been a violation of equal protection. *People v Burton*, 150 Misc. 2d 214, 569 N.Y.S.2d 861, 1990 N.Y. Misc. LEXIS 725 (N.Y. Sup. Ct. 1990).

CPL 500.10 (17), which provides that a bail bond may be secured by personal property with a value over and above all liabilities and encumbrances equal to the amount of the undertaking, but requires real property securing a bond to be worth twice the amount of undertaking, anachronistically lacks a discernible connection to a common sense interpretation of revised legislative intent, as well as not comporting with it. Although the Legislature wanted to safeguard the “adequacy” of a bond’s security, given that its later wisdom afforded a defendant liberty merely by having him incur a legal obligation under the form of an unsecured bond, the double equity requirement, seen as an aid in the enforcement and collection of forfeitures, sweeps too broadly. Moreover, although it was feared that real property might fluctuate notoriously, today stocks and bonds, which are subject to far more wild fluctuations than real estate, may secure a bail bond at their equity value (*CPL 500.10 [17] [a]*). Inasmuch as the record reveals no substantial State interest in the face of a requirement that more than incidentally interferes with defendant’s personal liberty, the double equity requirement is facially invalid. *People v Burton*, 150 Misc. 2d 214, 569 N.Y.S.2d 861, 1990 N.Y. Misc. LEXIS 725 (N.Y. Sup. Ct. 1990).

CPL 500.10 (17), which provides that a bail bond may be secured by personal property with a value over and above all liabilities and encumbrances equal to the amount of the undertaking, but requires real property securing a bond to be worth twice the amount of the undertaking, is irrational as a matter of law. The double equity requirement was enacted to deal with the “evil” of unscrupulous bail bondsmen who would secure bail bonds with “undesirable”, i.e., already pledged, property, but no rational relationship exists between the gravity of those “evils” and the contextual purpose of the modern statute. The double equity requirement visits a heavy and irretrievable burden not upon offending professional bail bondsmen, but upon an accused possessed of little resource where a court, despite an inclination to release a “good risk” defendant, feels impelled to fix bail in an amount reflective of the factual matters that must be taken into account. In the case of the instant defendant, a teenager accused of murdering his mother, there is neither overreaching nor fraud. *People v Burton*, 150 Misc. 2d 214, 569 N.Y.S.2d 861, 1990 N.Y. Misc. LEXIS 725 (N.Y. Sup. Ct. 1990).

There is no per se absolute right to bail; there is only a right to have bail determined in accordance with law, and bail is not considered to be excessive merely because a defendant cannot furnish it. Accordingly, for purposes of an equal protection challenge, the double equity provision of *CPL 500.10 (17) (b)*, which requires that real property securing a bail bond be worth at least twice the amount of the undertaking, can hardly be classified as an implicit “fundamental right” or based upon a showing of suspect criteria, which must then be construed to be of constitutional dimension. The applicable measure, therefore, must be the “rational basis” standard of review. *People v Burton*, 150 Misc. 2d 214, 569 N.Y.S.2d 861, 1990 N.Y. Misc. LEXIS 725 (N.Y. Sup. Ct. 1990).

Court authorization issued to sheriff’s department, directing that defendant who posts cash bail not be released prior to court conducting sufficiency hearing, is not premature and clearly is consistent with bail

provisions of CLS CPL Arts 500, 510 and 520, even though not expressly enumerated. [*People v Pullara*, 172 Misc. 2d 63, 656 N.Y.S.2d 832, 1997 N.Y. Misc. LEXIS 112 \(N.Y. County Ct. 1997\)](#).

Surety has no constitutional right to notice of defendant's date of arraignment. [*People v Seneca Ins. Co.*, 185 Misc. 2d 15, 710 N.Y.S.2d 776, 2000 N.Y. Misc. LEXIS 223 \(N.Y. Sup. Ct. 2000\)](#).

Double equity provision, contained in [*N.Y. Crim. Proc. Law § 500.10 \(17\)\(b\)*](#), had no application to an examination of an insurance company bail bond in the absence of other judicial mandates; the insurance company's licensure by the State, coupled with the presumption that the company will apply proper commercial risk assessment, warranted the court's acceptance of the value and sufficiency of the underlying collateral. [*People v Imran*, 193 Misc. 2d 746, 754 N.Y.S.2d 159, 2002 N.Y. Misc. LEXIS 1629 \(N.Y. City Crim. Ct. 2002\)](#).

Because the Court of Claims erroneously dismissed an inmate's damages claim based upon the DOC's failure to comply with the ministerial act of placing him in protective custody pursuant to a court's securing order under [*N.Y. Crim. Proc. Law §§ 500.10\(5\)*](#) and [*510.10*](#), when he presented sufficient evidence that a sexual assault was committed against him after he was erroneously placed back in the jail's general population, despite the aforementioned order, the damages claim was reinstated, liability on the part of the State was found, and the matter was remanded for a trial on the issue of damages. *Hunt v State of New York*, 36 A.D.3d 511, 828 N.Y.S.2d 355, 2007 NY Slip Op 397, 2007 N.Y. App. Div. LEXIS 602 (N.Y. App. Div. 1st Dep't 2007), abrogated as stated in [*Signature Health Ctr., LLC v State of New York*, 902 N.Y.S.2d 893, 2010 NY Slip Op 20211, 28 Misc. 3d 543, 2010 N.Y. Misc. LEXIS 1407 \(N.Y. Ct. Cl. 2010\)](#).

Petitioner failed to exhaust state court remedies for his defective indictment claim, accomplice charge claim, and intoxication charge claim, and because state court review of those three claims was procedurally barred, the court dismissed those claims for procedural default; petitioner could not again seek leave to appeal any of the three claims because he had already made the one request for leave to appeal to which he was entitled, and the claims were record-based and therefore could not be raised on collateral review. [*Canteen v Smith*, 555 F. Supp. 2d 407, 2008 U.S. Dist. LEXIS 39472 \(S.D.N.Y. 2008\)](#).

Opinion Notes

Agency Opinions

Custody of a prisoner passes to the sheriff upon the signing of the commitment. Transportation of prisoners from local courts to the county jail is the sheriff's responsibility, and thus a county charge. However, when the prisoner is charged with an offense triable by a town court, transportation is a town charge. 1977 NY Ops Atty Gen Nov 16.

The sheriff is responsible for custody and transportation of prisoners and other detainees. This responsibility may not be transferred to a private firm. 1980 NY Ops Atty Gen Dec. 8 (informal).

Duration and effectiveness bail bonds is governed by the Criminal Procedure Law, storage of bail bond records by the county clerk, and the destruction of obsolete records should be done in accordance with the time limits set forth in the CPL. [*1987 NY Op Att'y Gen No. 87-76*, 1987 N.Y. AG LEXIS 23](#).

The Criminal Procedure Law permits a village or town justice to issue a securing order which commits to the county jail an individual arrested by state police pursuant to a warrant issued by a criminal court of New York City or of a non-adjointing county. 1990 N.Y. Op. Att'y Gen. No. I90-43.

When a town or village justice directs that the county sheriff produce a defendant in his custody for an appearance in Justice Court, the sheriff is responsible for delivering the defendant to the Justice Court and, in absence of another peace or police officer providing security at the justice court facility, is also responsible for guarding the defendant while at the justice court facility, awaiting his or her appearance. 1990 N.Y. Op. Att'y Gen. No. I90-65.

Research References & Practice Aids

Cross References:

This section referred to in CLS [Penal § 70.25](#).

Federal Aspects:

Release of defendant from custody, [USCS Federal Rules of Criminal Procedure, Rule 46](#).

Jurisprudences:

8 Am Jur 2d, Bail and Recognizance §§ 1 et seq.

3A Am Jur Legal Forms 2d, Bail and Recognizance §§ 35:11 et seq.

8 Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure, Forms 14.– 25.

Law Reviews:

Carbone, Seeing through the emperor's new clothes: rediscovery of basic principles in the administration of bail. 34 Syracuse L. Rev. 517.

Treatises

Matthew Bender's New York Practice Guides:

[LexisNexis AnswerGuide New York Criminal Procedure § 5.05](#) .Defining Terms Related to Bail.

Matthew Bender's New York Practice Guides:

[New York Criminal Practice Ch. 44](#) Appeals.

Annotations:

Pretrial preventive detention by state court. [75 ALR3d 956](#).

Bail: duration of surety's liability on posttrial bail bond. [32 ALR4th 575](#).

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction. [35 ALR4th 1192](#).

Propriety, after obligors on appearance bond have been exonerated pursuant to [Rule 46\(f\) of the Federal Rules of Criminal Procedure](#), of applying cash or other security to fine imposed on accused. [58 ALR Fed 676](#).

Bail bond forfeiture proceedings as civil or criminal for purposes of time for appeal under Rule 4 of Federal Rules of Appellate Procedure. 70 ALR Fed 952.

Matthew Bender's New York Practice Guides:

Checklist for Understanding Policies and Law Related to Bail [LexisNexis AnswerGuide New York Criminal Procedure § 5.02](#).

FORMS:

New York Criminal Practice Ch. 13A Bail Recognizance and Commitment Forms.

Texts:

[New York Criminal Practice Ch. 13](#).

Hierarchy Notes:

[NY CLS CPL](#)

[NY CLS CPL, Pt. THREE, Title P](#)

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NY CLS CPL § 510.10

Current through 2018 Chapter 1

New York Consolidated Laws Service > Criminal Procedure Law > Part THREE Special Proceedings and Miscellaneous Procedures > Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment > Article 510 Recognizance, Bail and Commitment—Determination of Application for Recognizance or Bail, Issuance of Securing Orders, and Related Matters

§ 510.10. Securing order; when required

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, initially comes under the control of a court, such court must, by a securing order, either release him on his own recognizance, fix bail or commit him to the custody of the sheriff. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and he is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

History

Add, L 1970, ch 996, § 1; amd, L 1984, ch 459, § 1, eff Nov 1, 1984.

Annotations

Notes to Decisions

In the absence of specific legislative direction, parolees are not entitled either to bail or to relief pending a hearing before the parole board. [*People ex rel. Calloway v Skinner*, 33 N.Y.2d 23, 347 N.Y.S.2d 178, 300 N.E.2d 716, 1973 N.Y. LEXIS 1074 \(N.Y. 1973\)](#).

A parole revocation proceeding is not a "criminal action or proceeding" contemplated by [*Criminal Procedure Law § 510.10*](#). [*People ex rel. Little v Monroe*, 38 A.D.2d 398, 330 N.Y.S.2d 221, 1972 N.Y. App. Div. LEXIS 5046 \(N.Y. App. Div. 2d Dep't 1972\)](#).

A parolee accused of parole violation is not entitled either to bail or to release. [*People ex rel. Little v Monroe*, 38 A.D.2d 398, 330 N.Y.S.2d 221, 1972 N.Y. App. Div. LEXIS 5046 \(N.Y. App. Div. 2d Dep't 1972\)](#).

Court was justified in ordering overnight detention in court holding cells of prisoners who could not post bail and whose release on their own recognizance was contrary to public interest, where sheriff's deputies left courthouse at end of day without fulfilling their responsibility to take prisoners into custody; given court's dilemma whether to release prisoners to street or to detain them overnight in courthouse, there existed "extraordinary or emergency circumstances" which justified such detention, especially since court's exercise of custody terminated on following morning when sheriff agreed to take control of prisoners. [*Howell v McGinity*, 129 A.D.2d 60, 516 N.Y.S.2d 694, 1987 N.Y. App. Div. LEXIS 43661 \(N.Y. App. Div. 2d Dep't 1987\)](#), app. denied, 70 N.Y.2d 607, 519 N.Y.S.2d 1030, 514 N.E.2d 388, 1987 N.Y. LEXIS 18565 (N.Y. 1987).

In probable cause hearing required under 1975 amendments for 14-day detention of juvenile, evidentiary standards applicable to hearing on felony complaint in criminal court govern, and amendment apparently intends that probable cause hearing must be held within three days after filing of petition, although that period may be extended another three days under "special circumstances." [*In re Q.*, 83 Misc. 2d 945, 373 N.Y.S.2d 993, 1975 N.Y. Misc. LEXIS 3020 \(N.Y. Fam. Ct. 1975\)](#).

Superior court properly set bail for defendant, on indictment, in amount higher than amount set by local criminal court which arraigned defendant on felony complaint where superior court in issuing CLS [CPL § 510.10](#) securing order—its first discretionary release determination in case—conducted inquiry showing that its determination was based on consideration of criteria in CLS [CPL § 510.30](#); any allegations of change of circumstances were irrelevant since securing order was not modification by court of concurrent jurisdiction of first release discretionary determination. [*People v Mohammed*, 171 Misc. 2d 130, 653 N.Y.S.2d 492, 1996 N.Y. Misc. LEXIS 478 \(N.Y. Sup. Ct. 1996\)](#).

Local criminal court securing order is not binding on superior court when making its initial securing order. [*People v Mohammed*, 171 Misc. 2d 130, 653 N.Y.S.2d 492, 1996 N.Y. Misc. LEXIS 478 \(N.Y. Sup. Ct. 1996\)](#).

Although Criminal Procedure Law does not specifically authorize court to issue securing order holding defendant on bail after dismissal of indictment following trial with leave to seek new indictment, court has such authority under CLS Jud § 2-b(3), which grants courts power to devise and make process and forms of proceedings necessary to carry into effect their powers and jurisdiction. [*People v Storey*, 182 Misc. 2d 365, 701 N.Y.S.2d 248, 1999 N.Y. Misc. LEXIS 473 \(N.Y. Sup. Ct. 1999\)](#).

Because the Court of Claims erroneously dismissed an inmate's damages claim based upon the DOC's failure to comply with the ministerial act of placing him in protective custody pursuant to a court's securing order under [N.Y. Crim. Proc. Law §§ 500.10\(5\)](#) and [510.10](#), when he presented sufficient evidence that a sexual assault was committed against him after he was erroneously placed back in the jail's general population, despite the aforementioned order, the damages claim was reinstated, liability on the part of the State was found, and the matter was remanded for a trial on the issue of damages. *Hunt v State of New York*, 36 A.D.3d 511, 828 N.Y.S.2d 355, 2007 NY Slip Op 397, 2007 N.Y. App. Div. LEXIS 602 (N.Y. App. Div. 1st Dep't 2007), abrogated as stated in [*Signature Health Ctr., LLC v State of New York*, 902 N.Y.S.2d 893, 2010 NY Slip Op 20211, 28 Misc. 3d 543, 2010 N.Y. Misc. LEXIS 1407 \(N.Y. Ct. Cl. 2010\)](#).

Opinion Notes

Agency Opinions

A county may not hire a private extradition service to assist in the transportation and detention of prisoners requiring extradition back to New York from other jurisdictions. 1990 N.Y. Op. Att'y Gen. No. I90-18, [1990 N.Y. AG LEXIS 23](#).

The Criminal Procedure Law permits a village or town justice to issue a securing order which commits to the county jail an individual arrested by state police pursuant to a warrant issued by a criminal court of New York City or of a non-adjointing county. 1990 N.Y. Op. Att'y Gen. No. I90-43.

When a town or village justice directs that the county sheriff produce a defendant in his custody for an appearance in Justice Court, the sheriff is responsible for delivering the defendant to the Justice Court and, in absence of another peace or police officer providing security at the justice court facility, is also responsible for guarding the defendant while at the justice court facility, awaiting his or her appearance. 1990 N.Y. Op. Att'y Gen. No. I90-65.

Research References & Practice Aids

Cross References:

Procedure after arrest, § 120.90.

Fixing pre-arraignment bail, § 140.20(2)(b).

Pre-arraignment bail, § 150.30.

Necessity of bail or release upon recognizance unless there is an immediate final disposition of action, § 170.10(7).

Release upon recognizance where defendant appears by counsel, § 170.10(7).

Release on own recognizance upon failure of timely disposition of proceedings on felony complaint, § 180.80.

Termination of effectiveness of securing order, § 210.45(9).

Issuance of securing order upon remission of case by appellate court to criminal court upon reversal or modification of judgment, § 470.45.

“Securing order”, § 500.10(5).

Material witness order, §§ 620.10–620.80.

Federal Aspects:

Obstructing justice by false bail, [18 USCS § 1506](#).

Release and detention authority generally, [18 USCS § 3141](#).

Release or detention of a defendant pending trial, [18 USCS § 3142](#).

Release or detention of a defendant pending sentence or appeal, [18 USCS § 3143](#).

Release or detention of a material witness, [18 USCS § 3144](#).

Review and appeal of a release or detention order, [18 USCS § 3145](#).

Penalty for failure to appear, [18 USCS § 3146](#).

Penalty for an offense committed while on release, [18 USCS § 3147](#).

Sanctions for violation of a release condition, [18 USCS § 3148](#).

Surrender of an offender by a surety, [18 USCS § 3149](#).

Applicability to a case removed from a State court, [18 USCS § 3150](#).

Appeal by or on behalf of United States from bail order, [18 USCS § 3731](#).

Release of defendant from custody, [USCS Federal Rules of Criminal Procedure, Rule 46](#).

Jurisprudences:

8 Am Jur 2d, Bail and Recognizance §§ 9, 10.

81 Am Jur 2d, Witnesses § 4.

18 Am Jur Proof of Facts 2d 149, Excessive Bail.

Law Reviews:

Fabricant, Bail as a preferred freedom and the failures of New York's revision. 18 Buff. L. Rev. 303.

Pre-trial detention in the New York City jails. 7 Colum J L & Soc Prob 350.

Answer to the problem of bail: a proposal in need of empirical confirmation. 9 Colum J L & Soc Prob 394.

[Furman v. Georgia \(92 Sup Ct 2726\)](#): will the death of capital punishment mean a new life for bail? 2 Hofstra L. Rev. 432.

Post conviction bail: the application of an unjust and outmoded system—a case for reform. 15 NY L F 371.

Ares, Rankin, Sturz, Manhattan bail project: an interim report on the use of pre-trial parole. 38 NYU L Rev 67.

Rankin, Effect of pretrial detention. 39 NYU L Rev 631.

Wald, Pretrial detention and ultimate freedom: a statistical study. Foreword. 39 NYU L Rev 631.

Annotations:

Insanity of accused as affecting right to bail in criminal case. [*11 ALR3d 1385*](#).

Right of bail in proceedings in juvenile courts. [*53 ALR3d 848*](#).

Pretrial preventive detention by state court. [*75 ALR3d 956*](#).

Application of state statutes establishing pretrial release of accused on personal recognizance as presumptive form of release. [*78 ALR3d 780*](#).

Immunity of public officer from liability for injuries caused by negligently released individual. [*5 ALR4th 773*](#).

Governmental tort liability for injuries caused by negligently released individual. [*6 ALR4th 1155*](#).

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. [*12 ALR4th 722*](#).

Right to bail before conviction or upon review thereof, under [*Federal Criminal Procedure Rule 46\(a\)\(1\)*](#) and [*\(2\)*](#). [*1 L Ed 2d 1564*](#).

Texts:

[*New York Criminal Practice Ch. 13*](#).

Hierarchy Notes:

[*NY CLS CPL*](#)

[*NY CLS CPL, Pt. THREE, Title P*](#)

[*NY CLS CPL, Pt. THREE, Title P, Art. 510*](#)

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[NY CLS CPL § 510.20](#)

Current through 2018 Chapter 1

New York Consolidated Laws Service > Criminal Procedure Law > Part THREE Special Proceedings and Miscellaneous Procedures > Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment > Article 510 Recognizance, Bail and Commitment—Determination of Application for Recognizance or Bail, Issuance of Securing Orders, and Related Matters

§ 510.20. Application for recognizance or bail; making and determination thereof in general

1. Upon any occasion when a court is required to issue a securing order with respect to a principal, or at any time when a principal is confined in the custody of the sheriff as a result of a previously issued securing order, he may make an application for recognizance or bail.
2. Upon such application, the principal must be accorded an opportunity to be heard and to contend that an order of recognizance or bail must or should issue, that the court should release him on his own recognizance rather than fix bail, and that if bail is fixed it should be in a suggested amount and form.

History

Add, L 1970, ch 996, § 1, eff Sept 1, 1971.

Annotations

Notes to Decisions

A parolee accused of parole violation is not entitled either to bail or to release. [People ex rel. Little v Monroe, 38 A.D.2d 398, 330 N.Y.S.2d 221, 1972 N.Y. App. Div. LEXIS 5046 \(N.Y. App. Div. 2d Dep't 1972\).](#)

On the basis that a parole revocation is not a criminal action or proceeding within the meaning of [CPL §§ 510.20, 530.10](#), and [530.40](#), a county court did not have the power to release a paroled prisoner on bail who was in custody pursuant to a parole board warrant for retaking and detaining issued in accordance with [Correction L § 216](#). *People ex rel. Gatti v Amico*, 39 A.D.2d 826, 333 N.Y.S.2d 103, 1972 N.Y. App. Div. LEXIS 4503 (N.Y. App. Div. 4th Dep't 1972), app. dismissed, 30 N.Y.2d 955, 335 N.Y.S.2d 705, 287 N.E.2d 394, 1972 N.Y. LEXIS 1162 (N.Y. 1972).

Prosecutor should not have used statements made by defendant to representative of pretrial services agency in connection with defendant's application to be released on his own recognizance; however, under facts in record, use of such statements was not so prejudicial as to require reversal. *People v Rodriguez*, 48 A.D.2d 691, 367 N.Y.S.2d 840, 1975 N.Y. App. Div. LEXIS 9728 (N.Y. App. Div. 2d Dep't 1975), aff'd, [39 N.Y.2d 976, 387 N.Y.S.2d 110, 354 N.E.2d 850, 1976 N.Y. LEXIS 2916 \(N.Y. 1976\)](#).

Assistant district attorney in charge of case, who was on vacation at time arraignment court set bail for defendant, acted improperly in later making facts relating to defendant known to bail-setting court ex parte. *People ex rel. Freedman v Warden*, 184 A.D.2d 435, 585 N.Y.S.2d 397, 1992 N.Y. App. Div. LEXIS 8543 (N.Y. App. Div. 1st Dep't 1992).

Bail-fixing court did not abuse its discretion in remanding relator without bail given (1) heinous nature of crime, (2) serious and permanent injuries to one victim, (3) relator's prior record, including his alleged leadership of gang, and (4) risk of international flight. *People ex rel. Yiu Ming Wong v McGrane*, 204 A.D.2d 194, 612 N.Y.S.2d 862, 1994 N.Y. App. Div. LEXIS 5392 (N.Y. App. Div. 1st Dep't 1994).

The policy of the law favors bail because there is a presumption that the prisoner is innocent and detention before conviction is justified only if some legitimate purpose of the criminal process requires it; accordingly, the amount of bail to be required must normally not be more than is necessary to guarantee the prisoner's presence at the trial with the reasonableness of that amount to be determined by the circumstances surrounding each prisoner and by properly striking a balance between the need for a tie to the jurisdiction and the right to freedom from unnecessary restraint before conviction. [People v Maldonado](#), 95 Misc. 2d 113, 407 N.Y.S.2d 393, 1978 N.Y. Misc. LEXIS 2391 (N.Y. City Crim. Ct. 1978).

The purpose of requiring a defendant to post bail after his arrest is to ensure his appearance in court. [People ex rel. Shaw v Lombard](#), 95 Misc. 2d 664, 408 N.Y.S.2d 664, 1978 N.Y. Misc. LEXIS 2470 (N.Y. County Ct. 1978).

Where a defendant has an absolute right to bail or recognizance, the court may not impose an additional condition for his pretrial release on bail. the imposition of a curfew as a condition for the pretrial release of a defendant on bail, for the ostensible purpose of preventative detention, is illegal. [People ex rel. Shaw v Lombard](#), 95 Misc. 2d 664, 408 N.Y.S.2d 664, 1978 N.Y. Misc. LEXIS 2470 (N.Y. County Ct. 1978).

While neither the necessity to protect potential witnesses from a defendant nor the necessity to protect the community from him is a statutory ground for denial or revocation of bail, the courts have inherent power to place restrictive conditions upon the pretrial release of a defendant for a legally permissible purpose, such as the protection of potential witnesses, but not preventative detention. [People ex rel. Shaw v Lombard](#), 95 Misc. 2d 664, 408 N.Y.S.2d 664, 1978 N.Y. Misc. LEXIS 2470 (N.Y. County Ct. 1978).

Although a pre-hearing protective order is constitutionally justifiable as necessary to protect the state's interest in protecting victims of domestic violence, the continuance of the order is not valid unless the defendant is given an opportunity to be heard. Although no specific provision for a hearing is included in [CPL 530.12](#), concerning protection for victims of family offenses, the section does state that orders of protection may be made a condition of release on bail, and, since the defendant is actually seeking to modify the court's bail order, the application to vacate the order of protection comes within the hearing provisions of [CPL 510.20](#). [People v Derisi](#), 110 Misc. 2d 718, 442 N.Y.S.2d 908, 1981 N.Y. Misc. LEXIS 3147 (N.Y. Dist. Ct. 1981).

Court would release defendant on his own recognizance and order bail to be exonerated where more than 6 months had passed since commencement of action without People announcing readiness for trial, and People had indicated that they declined to further prosecute case. [*People v Leonardo*, 141 Misc. 2d 526, 533 N.Y.S.2d 660, 1988 N.Y. Misc. LEXIS 545 \(N.Y. County Ct. 1988\)](#).

Real property offered on behalf of defendant as security for bail bond, which had net value of \$155,589.80 pursuant to valuation formula set out in CLS [CPL § 500.10](#)(17(b), was insufficient to serve as security where defendant's bail was set at \$100,000, since property value was not double amount of bail. [*People v Burton*, 148 Misc. 2d 716, 561 N.Y.S.2d 328, 1990 N.Y. Misc. LEXIS 512 \(N.Y. Sup. Ct. 1990\)](#).

Superior court properly set bail for defendant, on indictment, in amount higher than amount set by local criminal court which arraigned defendant on felony complaint where superior court in issuing CLS [CPL § 510.10](#) securing order—its first discretionary release determination in case—conducted inquiry showing that its determination was based on consideration of criteria in CLS [CPL § 510.30](#); any allegations of change of circumstances were irrelevant since securing order was not modification by court of concurrent jurisdiction of first release discretionary determination. [*People v Mohammed*, 171 Misc. 2d 130, 653 N.Y.S.2d 492, 1996 N.Y. Misc. LEXIS 478 \(N.Y. Sup. Ct. 1996\)](#).

Local criminal court securing order is not binding on superior court when making its initial securing order. [*People v Mohammed*, 171 Misc. 2d 130, 653 N.Y.S.2d 492, 1996 N.Y. Misc. LEXIS 478 \(N.Y. Sup. Ct. 1996\)](#).

Research References & Practice Aids

Cross References:

“Release on own recognizance”, § 500.10(2).

“Fix bail”, § 500.10(3).

“Order of recognizance or bail”, § 500.10(6).

“Application for recognizance or bail”, § 500.10(7).

Federal Aspects:

Release of defendant from custody, [USCS Federal Rules of Criminal Procedure, Rule 46](#).

Jurisprudences:

8 Am Jur 2d, Bail and Recognizance §§ 50 et seq.

39 Am Jur 2d, Habeas Corpus §§ 40 et seq.

81 Am Jur 2d, Witnesses § 4.

4 Am Jur Pl & Pr Forms (Rev ed), Bail and Recognizance, Forms 7, 8.

8 Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure, Forms 14–25, 42–47.

Annotations:

Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties. [23 ALR2d 803](#).

Failure to appeal and the like, resulting in forfeiture or conditional forfeiture of bail, as affecting right to second admission to bail in same noncapital criminal case. [29 ALR2d 945](#).

Bail jumping after conviction or failure to surrender or to appear for sentencing and the like as contempt. [34 ALR2d 1100](#).

Court's power and duty, pending determination of habeas corpus proceeding on merits, to admit petitioner to bail. [56 ALR2d 668](#).

Governor's authority to remit forfeited bail bond. [77 ALR2d 988](#).

Appealability of order relating to forfeiture of bail. [78 ALR2d 1180](#).

Right to apply cash bail to payment of fine. [92 ALR2d 1084](#).

Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment. [98 ALR2d 966](#).

Insanity of accused as affecting right to bail in criminal case. [11 ALR3d 1385](#).

Pretrial preventive detention by state court. [75 ALR3d 956](#).

When is a person in custody of governmental authorities for purpose of exercise of state remedy of habeas corpus—modern cases. [26 ALR4th 455](#).

Bail: effect on surety's liability under bail bond of principal's incarceration in other jurisdiction. [33 ALR4th 663](#).

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction. [35 ALR4th 1192](#).

State statutes making default on bail a separate criminal offense. [63 ALR4th 1064](#).

Failure of person, released pursuant to provisions of Federal Bail Reform Act of 1966 ([18 USCS §§ 3141 et seq.](#)), to make appearance as subjecting person to penalty provided for by [18 USCS § 3150](#). [66 ALR Fed 668](#).

Supreme Court's construction and application of provision of *Federal Constitution's Eighth Amendment* that excessive bail shall not be required. [95 L Ed 2d 1010](#).

Texts:

[New York Criminal Practice Ch. 13](#).

Hierarchy Notes:

[NY CLS CPL](#)

[NY CLS CPL, Pt. THREE, Title P](#)

[NY CLS CPL, Pt. THREE, Title P, Art. 510](#)

Forms

Forms

Motion for Release on Personal Recognizance

[Caption]

Defendant, by his court-appointed attorney, _____, moves for his release on his personal recognizance. Defendant is charged with violation of Penal L § _____.

As grounds for this motion, defendant's attorney states:

1. Defendant was arrested on _____, 20_____, having voluntarily surrendered himself to the police.
2. Bail was fixed by _____ on _____, 20_____, at _____ [amount].
3. A preliminary hearing was held before _____ on _____, 20_____, at which time probable cause was found to hold the defendant.
4. The defendant was born in _____ on _____, 20_____ and has lived in this County for _____ years. At the time of arrest, defendant was residing at _____, with his _____.
5. Defendant has been married for _____ years and was living with his wife at the time of his arrest. Defendant has _____ children, ages _____.
6. Defendant was self-supporting and sole support of his family and the other dependents at the time of his arrest.
7. At the time of his arrest, defendant was working as a _____, at _____. He had been so employed for _____. His immediate supervisor, _____ was contacted by counsel on _____, 20_____, and stated that defendant could return to his employment if released on bail.
8. Defendant has no prior criminal record.
9. Defendant has previously been admitted to bail in the _____ Court having been charged with _____. Bail was set in the amount of _____, and defendant appeared as required.
10. Defendant is presently in a good state of physical health, has never suffered from a mental illness, and does not now nor has he ever used narcotic drugs.

11. At the time of his arrest defendant had \$ _____. Defendant currently has \$ _____.
He has been incarcerated for _____ weeks and has been unable to pay the premium
on his bond as currently set.

12. Defendant's attorney has verified the above information.

13. Defendant asserts that if he is released on bail, under no circumstances will he attempt to flee.

WHEREFORE, counsel for the defendant requests that defendant be released on his own recognizance.

Dated: _____

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End of Document

[NY CLS CPL § 510.30](#)

Current through 2018 Chapter 1

New York Consolidated Laws Service > Criminal Procedure Law > Part THREE Special Proceedings and Miscellaneous Procedures > Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment > Article 510 Recognizance, Bail and Commitment—Determination of Application for Recognizance or Bail, Issuance of Securing Orders, and Related Matters

§ 510.30. Application for recognizance or bail; rules of law and criteria controlling determination

1. Determinations of applications for recognizance or bail are not in all cases discretionary but are subject to rules, prescribed in article five hundred thirty and other provisions of law relating to specific kinds of criminal actions and proceedings, providing (a) that in some circumstances such an application must as a matter of law be granted, (b) that in others it must as a matter of law be denied and the principal committed to or retained in the custody of the sheriff, and (c) that in others the granting or denial thereof is a matter of judicial discretion.
2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:
 - (a) With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:
 - (i) The principal's character, reputation, habits and mental condition;
 - (ii) His employment and financial resources; and
 - (iii) His family ties and the length of his residence if any in the community; and
 - (iv) His criminal record if any; and
 - (v) His record of previous adjudication as a juvenile delinquent, as retained pursuant to [section 354.2 of the family court act](#), or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; and
 - (vi) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and
 - (vii) Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, the following factors:

- (A) any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, whether or not such order of protection is currently in effect; and
 - (B) the principal's history of use or possession of a firearm; and
 - (viii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and
 - (ix) If he is a defendant, the sentence which may be or has been imposed upon conviction.
- (b) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraph (a).
3. When bail or recognizance is ordered, the court shall inform the principal, if he is a defendant charged with the commission of a felony, that the release is conditional and that the court may revoke the order of release and commit the principal to the custody of the sheriff in accordance with the provisions of subdivision two of section 530.60 of this chapter if he commits a subsequent felony while at liberty upon such order.

History

Add, L 1970, ch 996, § 1; amd, L 1977, ch 447, § 6, eff Sept 1, 1977; L 1979, ch 411, § 13; L 1981, ch 788, § 1, eff July 27, 1981; L 1982, ch 920, § 77, eff July 1, 1983; [L 2012, ch 491, § 1](#) (Part D), eff Dec 24, 2012.

Annotations

Notes

Commission Staff Notes:

1970 Comment .

The 1969 study bill, at § 510.30(2) contained in paragraph (b) thereof, a procedure for holding a defendant in custody without bail because of the likelihood that he would be a danger to society if permitted to remain at liberty during the pendency of the action. This concept is commonly referred to as "preventive detention." The formulation contained in the 1969 study bill was, admittedly, inadequate because it failed to provide appropriate due process safeguards. On reconsideration of the provision and of the whole question of preventive detention, the Commission eventually voted to delete the entire concept from the CPL. It was discovered that opposition to the procedure came not only from those who are defense-oriented, but also from many who are prosecution-oriented, such as district attorneys. The latter's

objections stemmed from the belief that a preventive detention procedure that could successfully meet constitutional requirements of due process would impose a whole new layer of hearings on the already overburdened local criminal courts, all out of proportion to the gains that could reasonably be expected to result from such a system.

Amendment Notes:

2012. Chapter 491, § 1 (Part D) amended:

By adding sub 2, par (a), subpar (vii).

By redesignating former sub 2, par (a), subpar (vii) as sub 2, par (a), subpar (viii).

By redesignating former sub 2, par (a), subpar (viii) as sub 2, par (a), subpar (ix).

Notes to Decisions

I. Generally

1. In general

2. Constitutionality

3. Hearing

4. Criteria for determination

5. Validity of particular orders

6.—Orders fixing bail amount

II. Under Former Crim C § 550

7. In general

III. Under Former Crim C § 552

8. In general

9. Discretion of court

10. Effect of prior convictions

11.—Misdemeanor convictions

IV. Under Former Crim C § 553

12. In general

13. Discretion of court

14. Criteria applicable

15.Right to bail in particular cases

16.Appellate review of bail denial

V.Under Former Crim C § 555

17.In general

18.Right to bail under particular circumstances

19.—Pending certificate of reasonable doubt

20.—Prior convictions

I. Generally

1. In general

City judge was removed from the bench under [N.Y. Const. art. VI, § 22](#) and N.Y. Jud. Ct. Acts Law § 44 after violating [N.Y. Comp. Codes R. & Regs. tit. 22, §§ 100.1, 100.2\(A\)](#), and [100.3\(B\)\(1\)](#), (3), and (6) for revoking or denying recognizance release and setting bail or increasing bail pursuant to [N.Y. Crim. Proc. Law § 510.30\(2\)](#) for 46 domestic violence defendants because no one brought up a cell phone that was ringing during court proceedings; while mitigating factors, such as the judge's marital difficulties, his otherwise unblemished record, and his sincere remorse, existed, because the judge had numerous opportunities during the incident to reconsider the enormity of his actions and acted without any lawful basis, his conduct was damaging to the reputation of the courts and was extremely egregious. [Matter of Restaino \(State Commn. on Jud. Conduct\), 10 N.Y.3d 577, 860 N.Y.S.2d 462, 2008 NY Slip Op 4947, 890 N.E.2d 224, 2008 N.Y. LEXIS 1475 \(N.Y. 2008\)](#).

Although an order denying bail is nonappealable, such an order or an order setting bail which is claimed to be excessive is reviewable by a writ of habeas corpus, if it appears that the constitutional or statutory standards inhibiting excessive bail or the arbitrary refusal of bail are violated. [People ex rel. Rosenthal v Wolfson, 65 A.D.2d 113, 410 N.Y.S.2d 846, 1978 N.Y. App. Div. LEXIS 13066 \(N.Y. App. Div. 1st Dep't 1978\)](#), rev'd, [48 N.Y.2d 230, 422 N.Y.S.2d 55, 397 N.E.2d 745, 1979 N.Y. LEXIS 2349 \(N.Y. 1979\)](#).

Where there appears no change in circumstances warranting increase in bail and record is barren of any evidence that court considered requisite standards of CLS [CPL 510.30\(2\)\(a\)](#), there was abuse of discretion by court in increasing bail, such that bail will be fixed at amount originally set. [People ex rel. Meyer v Commissioner of Dep't of Correction, 119 A.D.2d 472, 500 N.Y.S.2d 684, 1986 N.Y. App. Div. LEXIS 55420 \(N.Y. App. Div. 1st Dep't 1986\)](#).

When order pursuant to CLS [CPL § 460.50](#) is sought as matter of judicial discretion, concern of judge or justice to whom application is made is to insure that defendant will remain amenable to order of the court determining the appeal, while criteria on which application is to be decided are set forth in CLS [CPL § 510.30\(2\)\(a\)](#) and (b). [People v Kern, 137 A.D.2d 862, 524 N.Y.S.2d 521, 1988 N.Y. App. Div. LEXIS 1868 \(N.Y. App. Div. 2d Dep't 1988\)](#), aff'd, [149 A.D.2d 187, 545 N.Y.S.2d 4, 1989 N.Y. App. Div. LEXIS 10653 \(N.Y. App. Div. 2d Dep't 1989\)](#).

Supreme Court erred in granting, to extent of setting bail, relator's petition seeking writ of habeas corpus, which recited that relator was remanded without bail "without just cause or reason" and asserting that disposition was "arbitrary and excessive," where relator had been denied bail at his arraignment, and Supreme Court set bail without reviewing minutes of previous bail application; court may not undertake de novo determination of bail in collateral proceedings, and Supreme Court, without review of record, had no basis on which to determine that denial of bail and remand for trial was abuse of arraignment court's discretion. *People ex rel. Siegel v Sietlaff*, 182 A.D.2d 389, 582 N.Y.S.2d 131, 1992 N.Y. App. Div. LEXIS 5423 (N.Y. App. Div. 1st Dep't 1992).

Assistant district attorney in charge of case, who was on vacation at time arraignment court set bail for defendant, acted improperly in later making facts relating to defendant known to bail-setting court ex parte. *People ex rel. Freedman v Warden*, 184 A.D.2d 435, 585 N.Y.S.2d 397, 1992 N.Y. App. Div. LEXIS 8543 (N.Y. App. Div. 1st Dep't 1992).

Scope of collateral review by court hearing habeas corpus petition concerning grant or denial of bail application is narrow and concerns only whether court abused its discretion pursuant to CLS CPL § 510.30 or violated constitutional standard prohibiting excessive bail or arbitrary refusal of bail. *People ex rel. Robinson v Campbell*, 184 A.D.2d 988, 585 N.Y.S.2d 604, 1992 N.Y. App. Div. LEXIS 8582 (N.Y. App. Div. 3d Dep't 1992).

Arraignment court's denial of bail was beyond correction in habeas corpus where it was exercise of discretion that was rationally based on factors set forth in CLS CPL § 510.30(2)(a). *People ex rel. Sachs v Rose M. Singer Ctr.*, 257 A.D.2d 544, 682 N.Y.S.2d 595, 1999 N.Y. App. Div. LEXIS 697 (N.Y. App. Div. 1st Dep't 1999).

Defendant's guilty plea was not voluntary, and the convictions based on that plea were improper because the record reflected both that the trial court made an unadorned threat to remand defendant without bail if he did not plead guilty, and that the threat was a powerful factor in persuading defendant to enter the plea when he did; in contrast to plea negotiations, bail status concerned only the kind and degree of control or restriction that was necessary to secure defendant's attendance when required, N.Y. Crim. Proc. Law § 510.30(2)(a), and had no legitimate connection to the mutuality of advantage underlying plea bargaining because it did not relate either to the more lenient sentence for which defendant was negotiating or to the waiver of trial and the certainty of conviction the prosecution was seeking. *People v Grant*, 61 A.D.3d 177, 873 N.Y.S.2d 355, 2009 NY Slip Op 1498, 2009 N.Y. App. Div. LEXIS 1438 (N.Y. App. Div. 2d Dep't 2009).

The People must make a showing of factual matters to support the factors on which they rely in their argument for a particular amount of bail. *People v Vasquez*, 76 Misc. 2d 5, 348 N.Y.S.2d 1007, 1973 N.Y. Misc. LEXIS 1416 (N.Y. City Crim. Ct. 1973).

An application for bail is an appeal to court's discretion, and court is required to make judgment as to nature of control necessary to secure defendant's appearance and whether defendant's release would constitute grave threat to safety of society. *Brunetti v Scotti*, 77 Misc. 2d 388, 353 N.Y.S.2d 630, 1974 N.Y. Misc. LEXIS 1145 (N.Y. Sup. Ct. 1974).

The policy of the law favors bail because there is a presumption that the prisoner is innocent and detention before conviction is justified only if some legitimate purpose of the criminal process requires it;

accordingly, the amount of bail to be required must normally not be more than is necessary to guarantee the prisoner's presence at the trial with the reasonableness of that amount to be determined by the circumstances surrounding each prisoner and by properly striking a balance between the need for a tie to the jurisdiction and the right to freedom from unnecessary restraint before conviction. [*People v Maldonado*, 95 Misc. 2d 113, 407 N.Y.S.2d 393, 1978 N.Y. Misc. LEXIS 2391 \(N.Y. City Crim. Ct. 1978\)](#).

The purpose of requiring a defendant to post bail after his arrest is to ensure his appearance in court. [*People ex rel. Shaw v Lombard*, 95 Misc. 2d 664, 408 N.Y.S.2d 664, 1978 N.Y. Misc. LEXIS 2470 \(N.Y. County Ct. 1978\)](#).

In a prosecution for robbery in the first and second degrees, information concerning defendant's place of residence at the time of the incident and that of his common-law wife, which information was obtained without Miranda warnings and without the assistance of counsel at a New York City Criminal Justice Agency interview to determine the defendant's eligibility for release on bail, was not admissible against the defendant at trial on cross-examination on the issue of credibility. [*People v Brown*, 109 Misc. 2d 366, 438 N.Y.S.2d 955, 1981 N.Y. Misc. LEXIS 2401 \(N.Y. Sup. Ct. 1981\)](#).

[CPL 510.30](#), subd 3, which provides that when bail is ordered for a defendant charged with the commission of a felony, he must be informed that it could be revoked if he commits a subsequent felony while at liberty upon such bail order, was not intended to be a jurisdictional predicate, so that failure to notify the defendant would not prevent the court from considering revocation. [*People v Torres*, 112 Misc. 2d 145, 446 N.Y.S.2d 969, 1981 N.Y. Misc. LEXIS 3414 \(N.Y. Sup. Ct. 1981\)](#).

Preliminary hearing held pursuant to CLS [CPL § 180.70](#) could cure felony complaint that was defective due to its statement that defendant acted in concert with others, without any specification of defendant's individual actions; however, until defect was cured, defendant could neither be held in custody nor required to post security to obtain his freedom, and was required to be released on his own recognizance. [*People v Torres*, 141 Misc. 2d 19, 532 N.Y.S.2d 663, 1988 N.Y. Misc. LEXIS 585 \(N.Y. City Crim. Ct. 1988\)](#).

Real property offered on behalf of defendant as security for bail bond, which had net value of \$155,589.80 pursuant to valuation formula set out in CLS [CPL § 500.10](#)(17)(b), was insufficient to serve as security where defendant's bail was set at \$100,000, since property value was not double amount of bail. [*People v Burton*, 148 Misc. 2d 716, 561 N.Y.S.2d 328, 1990 N.Y. Misc. LEXIS 512 \(N.Y. Sup. Ct. 1990\)](#).

Court reviewing bail determination had jurisdiction to entertain habeas corpus petition pertaining to bail-setting court's disapproval of cash bail posted by 2 individuals on ground they were totally unrelated to petitioner, as challenged decision resulted in determination that posted bail was inadequate to secure petitioner's return to court and thus effectively denied him bail; however, only review would be as to whether challenged decision was arbitrary, capricious or abuse of discretion. [*People v Baker*, 188 Misc. 2d 821, 729 N.Y.S.2d 580, 2001 N.Y. Misc. LEXIS 272 \(N.Y. Sup. Ct. 2001\)](#).

The standards governing the discretionary granting or denial of bail are found in [CPL § 510.30](#), which provides that the essential interest of the state, pending trial, is to assure the defendant's court attendance when required. The same principles that apply to the discretionary denial of bail in the first instance also apply to the discretionary revocation of bail under [CPL § 530.60](#). United States ex rel. [*United States ex rel. Diller v Greco*, 426 F. Supp. 375, 1977 U.S. Dist. LEXIS 17689 \(S.D.N.Y. 1977\)](#).

Prisoner's claim that the state court's denial of the prisoner's motion under [N.Y. Crim. Proc. Law § 510.30\(2\)](#) for bail pending appeal of the prisoner's conviction violated the Eighth and Fourteenth Amendments was not cognizable in a 28 U.S.C.S. § 2254 habeas corpus petition because the claim was not exhausted in the prisoner's bail application and it was possible that the prisoner could have exhausted the claim through a state habeas corpus petition. [N.Y. Crim. Proc. Law § 460.50\(3\)](#)'s prohibition on multiple bail applications did not preclude state habeas corpus review of constitutional issues that were raised by the denial of bail applications, and the language of N.Y. [C.P.L.R. § 7010\(b\)](#) suggested that the arbitrary denial of discretionary bail applications was reviewable in a state habeas corpus proceeding. [Garson v Perlman, 541 F. Supp. 2d 515, 2008 U.S. Dist. LEXIS 458 \(E.D.N.Y. 2008\)](#).

Cit judge abused bail process by using bail in coercive, punitive manner where he repeatedly made no more than perfunctory inquiry into defendant's personal circumstances, and he set bail in amounts for violations and misdemeanors that were so exorbitant that they were tantamount to no bail, bore no reasonable relation to statutory criteria, and compelled inference that his purpose was improper one. In *Re Bauer*, Ops State Comm Jud Conduct (March 30, 2004).

Pattern of exceptionally high amounts of bail for relatively minor offenses, in cases that presented no extraordinary circumstances, would compel conclusion that city judge did not set bail in accordance with statutory guidelines (to insure that defendants would return to court), but that his purpose was punitive (that he wanted to insure that defendants spent time in jail). In *Re Bauer*, Ops State Comm Jud Conduct (March 30, 2004).

2. Constitutionality

Provision of Family Court Act authorizing pretrial detention of youth charged as juvenile delinquent when there is serious risk that he may commit criminal acts before return date of petition did not violate equal protection or due process provisions of Federal or State Constitutions. [People ex rel. Wayburn v Schupf, 39 N.Y.2d 682, 385 N.Y.S.2d 518, 350 N.E.2d 906, 1976 N.Y. LEXIS 2795 \(N.Y. 1976\)](#).

Prisoner's Eighth and Fourteenth Amendment rights were not violated by state court's failure to state reasons for denial of bail pending appeal. [Finetti v Harris, 609 F.2d 594, 1979 U.S. App. LEXIS 11878 \(2d Cir. N.Y. 1979\)](#).

Denial of prisoner's discretionary right to bail while awaiting appeal was not a violation of Fourteenth Amendment rights where there was neither a failure to consider the application as required by law nor a decision rendered on a ground which infringes on otherwise constitutionally protected areas. [United States ex rel. Cameron v New York, 383 F. Supp. 182, 1974 U.S. Dist. LEXIS 6277 \(E.D.N.Y. 1974\)](#).

Denial of a prisoner's motion under [N.Y. Crim. Proc. Law § 510.30\(2\)](#) for bail pending appeal of the prisoner's conviction did not deprive the prisoner of substantive due process because § 510.30(2) did not create a protected liberty interest in bail pending appeal. [Garson v Perlman, 541 F. Supp. 2d 515, 2008 U.S. Dist. LEXIS 458 \(E.D.N.Y. 2008\)](#).

[N.Y. Crim. Proc. Law § 510.30\(2\)](#) cannot be the basis for a claim for violating substantive due process because it does not create a protectible liberty interest in bail pending appeal. [N.Y. Crim. Proc. Law § 510.30\(2\)](#) cannot be viewed as giving a prisoner a legitimate expectancy of release; it simply lists a series

of factors for the state court to consider in exercising its discretion on whether to grant bail pending appeal. [*Garson v Perlman*, 541 F. Supp. 2d 515, 2008 U.S. Dist. LEXIS 458 \(E.D.N.Y. 2008\)](#).

3. Hearing

Tactics consisting of prosecutor conversing ex parte in camera with court in proceeding pertaining to whether bail should be granted is disapproved of, except in most unusual circumstances. *People ex rel. Rosner v Warden, Bronx House of Detention for Men*, 53 A.D.2d 519, 384 N.Y.S.2d 175, 1976 N.Y. App. Div. LEXIS 13105 (N.Y. App. Div. 1st Dep't 1976).

Prearraignment procedure now existing in Bronx County whereby defense witnesses and complaining officer are not required to be present violates defendant's right to the granting of a reasonable bail by cutting off from the court its main and most significant source of information upon which it must rely in setting bail. [*People v Vasquez*, 76 Misc. 2d 5, 348 N.Y.S.2d 1007, 1973 N.Y. Misc. LEXIS 1416 \(N.Y. City Crim. Ct. 1973\)](#).

The scope of review upon a petition for a writ of habeas corpus challenging the denial of bail is limited to determining whether constitutional or statutory standards have been violated. When a bail application is opposed, the court should hold a hearing thereon. In this case, County Court's denial of bail without conducting a hearing, on the ground that the defendant, who was charged with three felonies and one misdemeanor, allegedly disobeyed a subpoena to testify before the Grand Jury, fails to comport with constitutional and statutory standards ([*NY Const, art I, § 5*](#); [*CPL 510.30*](#)). Since the reviewing court does not have an adequate record upon which it can make an independent determination of the defendant's bail application, the writ is sustained to the extent that the bail application is remanded to County Court for further proceedings not inconsistent with this decision. [*Becher on behalf of Vadakin v Dunston*, 142 Misc. 2d 103, 536 N.Y.S.2d 396, 1988 N.Y. Misc. LEXIS 783 \(N.Y. Sup. Ct. 1988\)](#).

4. Criteria for determination

The risk of danger to the community is not one of the listed criteria to be determined in considering bail, and hence may not properly be considered by the court in fixing bail in those cases where it is discretionary. *People ex rel. Schweizer v Welch*, 40 A.D.2d 621, 336 N.Y.S.2d 556, 1972 N.Y. App. Div. LEXIS 3906 (N.Y. App. Div. 4th Dep't 1972).

In determining whether or not denial of bail or fixation of bail violates constitutional or statutory standards inhibiting excessive bail or arbitrary refusal of bail, the habeas corpus court should consider relevant criteria including, inter alia, the nature of offense, penalty which may be imposed, probability of willing appearance of defendant or his flight to avoid punishment, pecuniary and social condition of defendant and his general reputation and character, and apparent nature and strength of proof as bearing on probability of his conviction. *People ex rel. Zinzow v Harkness*, 48 A.D.2d 746, 368 N.Y.S.2d 79, 1975 N.Y. App. Div. LEXIS 9826 (N.Y. App. Div. 3d Dep't 1975).

In determining whether to grant bail, the nature of the offense, probability of conviction, and severity of the sentence which may be imposed, all increasing the risk of flight or unavailability for trial, should be considered. [*People ex rel. Rosenthal v Wolfson*, 65 A.D.2d 113, 410 N.Y.S.2d 846, 1978 N.Y. App. Div. LEXIS 13066 \(N.Y. App. Div. 1st Dep't 1978\)](#), rev'd, [*48 N.Y.2d 230, 422 N.Y.S.2d 55, 397 N.E.2d 745, 1979 N.Y. LEXIS 2349 \(N.Y. 1979\)*](#).

It is improper for court to determine amount of bail based exclusively on court's conviction that defendant will be found guilty of serious crimes entailing lengthy term of imprisonment and to fail to give due consideration to defendant's demonstrated reliability in attending court. [*People ex rel. Benton v Warden, New York City House of Detention for Men*, 118 A.D.2d 443, 499 N.Y.S.2d 738, 1986 N.Y. App. Div. LEXIS 54329 \(N.Y. App. Div. 1st Dep't 1986\)](#).

Suicidal tendency cannot be equated with intent to abscond or flee in context of bail application, even though it can be argued that suicide is surest "escape" from prosecution. [*People ex rel. Bryce v Infante*, 144 A.D.2d 898, 535 N.Y.S.2d 215, 1988 N.Y. App. Div. LEXIS 12315 \(N.Y. App. Div. 3d Dep't 1988\)](#), app. denied, 73 N.Y.2d 708, 540 N.Y.S.2d 1003, 538 N.E.2d 355, 1989 N.Y. LEXIS 347 (N.Y. 1989).

District attorney may lawfully bring juvenile court record to attention of judge considering defendant's application for bail. [*Brunetti v Scotti*, 77 Misc. 2d 388, 353 N.Y.S.2d 630, 1974 N.Y. Misc. LEXIS 1145 \(N.Y. Sup. Ct. 1974\)](#).

Subdivision (a) of [*section 739 of the Family Court Act*](#), which, on its face, only authorizes the court, after the filing of a petition, to either release the respondent juvenile or direct his detention, must be interpreted so as to include a grant of bail powers under the well-established rule of construction that all powers necessary and proper to accomplish the purposes of that authority expressly given are to be implied, since it is reasonable to imply that if the Family Court is authorized to release juvenile respondents pending their return date in court, it is also empowered to determine the conditions of that release to insure their appearance on said return date. Furthermore, the propriety of setting bail for this purpose must be conceded, given its statutory recognition in this State. [*In re D.*, 96 Misc. 2d 870, 410 N.Y.S.2d 36, 1978 N.Y. Misc. LEXIS 2695 \(N.Y. Fam. Ct. 1978\)](#).

Local criminal court securing order is not binding on superior court when making its initial securing order. [*People v Mohammed*, 171 Misc. 2d 130, 653 N.Y.S.2d 492, 1996 N.Y. Misc. LEXIS 478 \(N.Y. Sup. Ct. 1996\)](#).

Application for bail pending appeal may be denied where there is likelihood that defendant will not appear for required court appearances or where determination is made that appeal is probably without merit; state court judgment is entitled to presumption of regularity even where denial of bail is unaccompanied by statement of reasons explaining decision. [*Miller v Reid*, 620 F. Supp. 70, 1985 U.S. Dist. LEXIS 14777 \(S.D.N.Y. 1985\)](#).

5. Validity of particular orders

Court did not abuse its discretion, and thus its determinations were "beyond correction" in habeas corpus where court denied bail to one defendant and set bail at \$150,000 for other defendant charged with attempted first degree grand larceny in scheme to sell worthless foreign notes with face value of more than \$8,000,000, since defendants were foreign nationals with no ties to New York or United States, court found that case against defendants was strong, would likely result in conviction, and that sentence of incarceration would be appropriate, and record indicated that one defendant was linked to alleged financier and arms dealer for Palestine Liberation Organization. [*People ex rel. Lazer v Warden, New York County Mens' House of Detention*, 79 N.Y.2d 839, 580 N.Y.S.2d 183, 588 N.E.2d 81, 1992 N.Y. LEXIS 24 \(N.Y. 1992\)](#).

Denial of bail on the sole ground that “it’s the opinion of the court that with the charges of murder the court should exercise its discretion and not grant bail” was arbitrary and an abuse of discretion, and did not comply with provisions of [Criminal Procedure Law § 510.30](#), subd 2. *People ex rel. Yannarilli v Draxler*, 41 A.D.2d 684, 340 N.Y.S.2d 755, 1973 N.Y. App. Div. LEXIS 5019 (N.Y. App. Div. 3d Dep’t 1973).

Although surety’s examination of criminal court records indicated that principal’s prior record, making him ineligible for bail, had been omitted by clerical error from records delivered to court, order granting principal’s bail pending appeal from conviction of second degree selling of dangerous drug was valid. *People v Public Service Mut. Ins. Co.*, 43 A.D.2d 961, 352 N.Y.S.2d 651, 1974 N.Y. App. Div. LEXIS 5786 (N.Y. App. Div. 2d Dep’t 1974).

Habeas corpus court, in granting release of defendants, who were charged with burglary in the first degree, burglary in the second degree and two counts of assault in the second degree, to custody of their parents because they were poor and unable to make bail, failed to consider necessary relevant criteria in determining whether to grant bail, other than defendants’ financial resources and thus bail would be fixed in amount of \$1,000. *People ex rel. Zinzow v Harkness*, 48 A.D.2d 746, 368 N.Y.S.2d 79, 1975 N.Y. App. Div. LEXIS 9826 (N.Y. App. Div. 3d Dep’t 1975).

Denial of bail to person, who faced life sentence and who also owed 32 years to federal authorities on bank robbery convictions, was not an abuse of discretion. *People ex rel. Rosner v Warden, Bronx House of Detention for Men*, 53 A.D.2d 519, 384 N.Y.S.2d 175, 1976 N.Y. App. Div. LEXIS 13105 (N.Y. App. Div. 1st Dep’t 1976).

Criminal Term’s denial of bail was arbitrary and abuse of discretion where there was no record of defendant’s failure to respond to court appearances and, with respect to homicide charges, it was questionable whether admitted murderer, who had implicated defendant as his accomplice, would testify and whether his testimony could be corroborated; only matter of legitimate concern in bail hearing is whether bail (or amount fixed) is necessary to insure defendant’s future appearances in court. [People ex rel. Masselli v Levy](#), 126 A.D.2d 501, 511 N.Y.S.2d 236, 1987 N.Y. App. Div. LEXIS 41643 (N.Y. App. Div. 1st Dep’t 1987).

Supreme Court properly granted petitioner’s application for writ of habeas corpus and fixed bail at \$10,000 on condition that petitioner enroll in alcoholism rehabilitation program, where County Court had denied bail solely for reasons of preventive detention, which is not valid ground on which bail may be denied (CLS [CPL § 510.30](#)). [People ex rel. Moquin v Infante](#), 134 A.D.2d 764, 521 N.Y.S.2d 580, 1987 N.Y. App. Div. LEXIS 50939 (N.Y. App. Div. 3d Dep’t 1987).

Defendant showed both that his appeal was meritorious, and that order staying judgment of conviction and releasing him on his own recognizance or on bail would satisfactorily secure his attendance in the court which rendered judgment on determination of his appeal, where (1) among 6 errors of law which defendant alleged to have occurred at trial, defendant raised one of first impression in state regarding trial court’s requirement that defense counsel set forth nonracial reasons for exercise of his peremptory jury challenges, and (2) defendant was high school student with no prior criminal or juvenile record, he was product of stable family, he had no signs of drug or alcohol abuse, he had held part-time jobs, he made each required appearance during trial following his release on bail, and trial judge had seen fit to continue his bail status during period between verdict and sentence. [People v Kern](#), 137 A.D.2d 862, 524 N.Y.S.2d

521, 1988 N.Y. App. Div. LEXIS 1868 (N.Y. App. Div. 2d Dep't 1988), aff'd, 149 A.D.2d 187, 545 N.Y.S.2d 4, 1989 N.Y. App. Div. LEXIS 10653 (N.Y. App. Div. 2d Dep't 1989).

In habeas corpus proceeding, court would reverse judgment which sustained writ to extent of reducing bail of petitioner on facts of case including nature of offense charged, quantity of narcotics seized, apparent strength of prosecution's case, and petitioner's lack of substantial roots in state. People ex rel. Marquez v Romano, 143 A.D.2d 787, 533 N.Y.S.2d 381, 1988 N.Y. App. Div. LEXIS 10072 (N.Y. App. Div. 2d Dep't 1988), app. dismissed, 73 N.Y.2d 919, 539 N.Y.S.2d 303, 536 N.E.2d 632 (N.Y. 1989).

In habeas corpus proceeding to review denial of bail on indictment for murder in second degree under depraved mind murder provision of CLS Penal § 125.25 arising out of death of petitioner's 2-month-old son, denial of bail was not justified on County Court's determination of probability of conviction and upon presence of emotional condition that might lead petitioner to abscond, where emotional condition referred to was suicidal tendency, since such tendency could not be equated with intent to abscond; bail would be set at \$50,000 with condition requiring petitioner to resume treatment with psychotherapist, which would be sufficient to secure petitioner's attendance when required. People ex rel. Bryce v Infante, 144 A.D.2d 898, 535 N.Y.S.2d 215, 1988 N.Y. App. Div. LEXIS 12315 (N.Y. App. Div. 3d Dep't 1988), app. denied, 73 N.Y.2d 708, 540 N.Y.S.2d 1003, 538 N.E.2d 355, 1989 N.Y. LEXIS 347 (N.Y. 1989).

Denial of bail and remand for trial was not abuse of discretion where (1) defendant was arrested in his apartment with 8 ounces of heroin, numerous glassine envelopes, and other paraphernalia for "cutting" and packing heroin, (2) he had prior conviction for possession of weapon, (3) he engaged in sizable transactions in cash, (4) he had residence at address other than one given in connection with bail application, and (5) he faced sentence of 15 years to life imprisonment. People ex rel. Siegel v Sielaff, 182 A.D.2d 389, 582 N.Y.S.2d 131, 1992 N.Y. App. Div. LEXIS 5423 (N.Y. App. Div. 1st Dep't 1992).

It was abuse of discretion to deny bail to subway motorman under indictment for multiple counts of murder, assault, and reckless endangerment arising out of his operation of train at time of fatal accident, considering defendant's ties to community, previous employment record, and lack of criminal record. *State ex rel. Ray v Warden of Brooklyn House of Detention for Men*, 184 A.D.2d 477, 585 N.Y.S.2d 424, 1992 N.Y. App. Div. LEXIS 8628 (N.Y. App. Div. 1st Dep't 1992).

Defendant was properly denied bail because he posed risk of flight, and was not entitled to habeas corpus in light of his criminal record, strength of People's case, potential sentence on conviction as discretionary persistent felony offender, his substantial financial resources and apparent ties to organized crime family, and his threats to witnesses. *State ex rel. Capparelli v McGrane*, 189 A.D.2d 561, 592 N.Y.S.2d 15, 1993 N.Y. App. Div. LEXIS 21 (N.Y. App. Div. 1st Dep't 1993), app. denied, 81 N.Y.2d 708, 598 N.Y.S.2d 767, 615 N.E.2d 224, 1993 N.Y. LEXIS 1185 (N.Y. 1993).

Bail-fixing court did not abuse its discretion in remanding relator without bail given (1) heinous nature of crime, (2) serious and permanent injuries to one victim, (3) relator's prior record, including his alleged leadership of gang, and (4) risk of international flight. *People ex rel. Yiu Ming Wong v McGrane*, 204 A.D.2d 194, 612 N.Y.S.2d 862, 1994 N.Y. App. Div. LEXIS 5392 (N.Y. App. Div. 1st Dep't 1994).

On a review of the transcript of the preliminary hearing and the defendant's background and applying the statutory standards, the court in its discretion determines that the defendant who is accused of murder in

the second degree be held without bail pending the outcome of the Grand Jury process. [*People v Mono*, 95 Misc. 2d 632, 408 N.Y.S.2d 283, 1978 N.Y. Misc. LEXIS 2487 \(N.Y. County Ct. 1978\)](#).

The imposition of a curfew as a condition for the pretrial release of a defendant on bail, for the ostensible purpose of preventative detention, is illegal. [*People ex rel. Shaw v Lombard*, 95 Misc. 2d 664, 408 N.Y.S.2d 664, 1978 N.Y. Misc. LEXIS 2470 \(N.Y. County Ct. 1978\)](#).

In prosecution of defendant for first degree rape and second degree burglary, it was abuse of discretion under CLS [CPLR § 7010](#) to impose condition of negative AIDS test prior to release on bail, since standards set forth in CLS [CPL § 510.30](#) do not contain such requirement; it is up to legislature to address issue of AIDS testing upon arrest for certain crimes for benefit of victim as well as accused. [*People ex rel. Glass v McGreevy*, 134 Misc. 2d 1085, 514 N.Y.S.2d 622, 1987 N.Y. Misc. LEXIS 2165 \(N.Y. Sup. Ct. 1987\)](#).

Writ of habeas corpus seeking review of County Court's denial of bail would be sustained where denial was based on desire to protect community from possible future criminal conduct by defendant; only matter of legitimate concern in determining bail application under CLS [CPL § 510.30\(2\)\(a\)](#) is whether any bail, or amount fixed, is necessary to insure defendant's future court appearances. [*People ex rel. Bauer v McGreevy*, 147 Misc. 2d 213, 555 N.Y.S.2d 581, 1990 N.Y. Misc. LEXIS 215 \(N.Y. Sup. Ct. 1990\)](#).

Court would deny bail to defendant accused of marijuana possession where he had expressed intent to kill officials of company from which he had been fired and union officials who had failed to help him, and then to commit suicide, police found 18 rifles and shotguns in his home, he was habitual user of marijuana, he was 56 years old and faced maximum sentence of 5 to 15 years, and psychiatrist testified that he was delusional and had personality disorder. [*People v Bosco*, 175 Misc. 2d 166, 668 N.Y.S.2d 331, 1997 N.Y. Misc. LEXIS 623 \(N.Y. County Ct. 1997\)](#).

Court acted within its authority in disapproving cash bail posted by 2 individuals who had never met petitioner or any members of his family and were posting bail due to personal motives which had no specific relevance to petitioner, as it was not unreasonable for court to find that total lack of relationship between petitioner and those posting bail did not comply with order fixing bail and contravened public policy, and record was completely devoid of evidence as to how individuals posting bail would ensure petitioner's appearance for future court dates. [*People v Baker*, 188 Misc. 2d 821, 729 N.Y.S.2d 580, 2001 N.Y. Misc. LEXIS 272 \(N.Y. Sup. Ct. 2001\)](#).

Denial of bail for an inmate was proper because the record supported the bail court's determination, based on the [N.Y. Crim. Proc. Law § 510.30\(2\)\(a\)](#) factors, that the inmate was a flight risk, given the severity of the crime charged, the likelihood of a conviction and lengthy sentence, the lack of strong ties to the community, and the inmate's financial resources, including the possibility of property outside the jurisdiction; this was not an appropriate case for granting bail under special conditions, particularly in light of the inmate's mental instability. There was a sufficient basis for concern that the inmate may not have been capable of consistently controlling her fears and impulses, which in the past had led to flight. [*People ex rel. Kuby v Merritt*, 96 A.D.3d 607, 947 N.Y.S.2d 454, 2012 NY Slip Op 5071, 2012 N.Y. App. Div. LEXIS 4975 \(N.Y. App. Div. 1st Dep't 2012\)](#), app. denied, 19 N.Y.3d 813, 951 N.Y.S.2d 723, 2012 NY Slip Op 84601, 976 N.E.2d 252, 2012 N.Y. LEXIS 2175 (N.Y. 2012).

6. —Orders fixing bail amount

Bail in the amount of \$50,000 held not excessive where defendant had two prior felony convictions, as well as crimes of lesser degree and used a number of aliases, and had previously been charged with unlawful flight to avoid prosecution. *People ex rel. Goins v Howard*, 41 A.D.2d 683, 341 N.Y.S.2d 10, 1973 N.Y. App. Div. LEXIS 5018 (N.Y. App. Div. 3d Dep't 1973).

Where no return was filed by respondent in habeas corpus proceeding instituted by petitioner alleging that he had been unconstitutionally denied bail, but application recited that petitioner was American citizen who had served four years with United States Marine Corps, that his character and reputation were good, that he was mentally sound and had resided for nearly all his life in Brooklyn and that his record for behavior during incarceration was very good, judgment setting bail in amount of \$100,000 in manslaughter case was modified and proceeding was remitted for purpose of completing record and making findings and setting of appropriate bail. *People ex rel. Perez v Nevil*, 45 A.D.2d 445, 358 N.Y.S.2d 778, 1974 N.Y. App. Div. LEXIS 4181 (N.Y. App. Div. 3d Dep't 1974), app. denied, 36 N.Y.2d 645, 1975 N.Y. LEXIS 2558 (N.Y. 1975).

In a habeas corpus proceeding to reduce bail on the ground that the County Court had abused its discretion by fixing an excessive bail, [CPLR § 7010](#), the writ would be reinstated and the matter remitted for redetermination where a review of the minutes of the proceedings before the Supreme Court on the return of the writ, revealed that the records and bail reduction application were not before the court when it conducted a hearing on the habeas corpus petition and rendered a decision. Since it appeared that the Supreme Court proceeded in the absence of those minutes upon a purported reconstruction of the proceedings by counsel, it was impossible for the reviewing court to determine whether it properly discharged its function and whether the factors to be considered by a bail-setting court pursuant to [CPL § 510.30](#) were in fact considered. *People ex rel. Mordkofsky v Stancari*, 93 A.D.2d 826, 460 N.Y.S.2d 830, 1983 N.Y. App. Div. LEXIS 17673 (N.Y. App. Div. 2d Dep't 1983).

In a theft prosecution of a brother and sister, in which sister's bail was originally set at \$4,500 but then increased to \$10,000 when she advised the court that she did not know where her brother, was, the reviewing court would sustain a writ of habeas corpus to the extent to resetting bail to \$4,500, where there was no showing that bail in excess of that amount was necessary, and defendant demonstrated that she would appear upon bail in that amount; the absence of a codefendant is not a factor in setting bail unless a defendant assisted in the absence. *People ex rel. Ryan v Infante*, 108 A.D.2d 987, 485 N.Y.S.2d 852, 1985 N.Y. App. Div. LEXIS 43318 (N.Y. App. Div. 3d Dep't 1985).

Defendant was entitled to reduction of bail to secure his attendance from \$10 million insurance company bond or cash to insurance company bond in that amount or, in alternative, to (1) personal recognizance bond in that amount to be executed by both defendant and his wife jointly and severally, (2) jewelry said to have value of \$500,000, (3) promissory note for \$10 million, secured by certain real property mortgages, (4) several other mortgages as security for note, and (5) agreement to report daily in person to New York City police department, even though defendant had previously been convicted of 2 federal offenses, where convictions occurred 14 years ago for offenses that would be misdemeanors under state law, and defendant indicated his ability to meet bail and release conditions. *State ex rel. Barrett v Koehler*, 132 A.D.2d 491, 518 N.Y.S.2d 8, 1987 N.Y. App. Div. LEXIS 49034 (N.Y. App. Div. 1st Dep't 1987), modified, 133 A.D.2d 49, 1987 N.Y. App. Div. LEXIS 49582 (N.Y. App. Div. 1st Dep't 1987), modified, 1987 N.Y. App. Div. LEXIS 46152 (N.Y. App. Div. 1st Dep't Oct. 27, 1987), app. dismissed, 70 N.Y.2d 951, 524 N.Y.S.2d 677, 519 N.E.2d 623, 1988 N.Y. LEXIS 14 (N.Y. 1988).

Supreme Court, after sustaining writ of habeas corpus, properly considered bail application de novo even though record of proceedings in County Court was not before Supreme Court since, having vacated County Court's denial of bail as unlawful, it was acting as nisi prius court and had sufficient evidence on which to make bail determination. *People ex rel. Moquin v Infante*, 134 A.D.2d 764, 521 N.Y.S.2d 580, 1987 N.Y. App. Div. LEXIS 50939 (N.Y. App. Div. 3d Dep't 1987).

There was nothing improper in fixing bail at \$10,000 on condition that defendant enroll in alcoholism rehabilitation program where defendant was charged, inter alia, with second degree murder and vehicular manslaughter; however, order would be modified to include additional condition that defendant not operate motor vehicle while released on bail and that she surrender her driver's license during such time. *People ex rel. Moquin v Infante*, 134 A.D.2d 764, 521 N.Y.S.2d 580, 1987 N.Y. App. Div. LEXIS 50939 (N.Y. App. Div. 3d Dep't 1987).

Bail of \$105,000 imposed on illegal alien from Colombia who was charged with various narcotics offenses did not violate constitutional or statutory standards inhibiting excessive bail where (1) petitioner faced possible sentences of at least 15 years to life if convicted, (2) petitioner had fled on 3 prior occasions after posting bail over past several years, and (3) People's proof appeared to be strong. *People ex rel. Morales v Warden*, 166 A.D.2d 626, 561 N.Y.S.2d 587, 561 N.Y.S.2d 642, 1990 N.Y. App. Div. LEXIS 13382 (N.Y. App. Div. 2d Dep't 1990).

It was proper exercise of discretion to set bail at \$50,000 on charge of third degree burglary where (1) defendant had extensive criminal record and would be sentenced as second felony offender if found guilty, (2) charged crime was committed while defendant was out on bail for another crime, (3) case against him was strong, (4) factors mandated by CLS CPL § 510.30(3) were considered, and (5) proceedings were within statutory and constitutional boundaries. *People ex rel. Robinson v Campbell*, 184 A.D.2d 988, 585 N.Y.S.2d 604, 1992 N.Y. App. Div. LEXIS 8582 (N.Y. App. Div. 3d Dep't 1992).

Habeas corpus court exceeded narrow scope of its powers, and erred in substituting its discretion for that of arraignment court, by reducing bail in criminal action from \$500,000 bond or \$250,000 cash alternative to \$250,000 bond or \$100,000 cash alternative where nature of offense, probability of conviction, and severity of sentence which might be imposed all increased risk of flight or unavailability for trial. *People ex rel. Cassar v Bednowsky*, 231 A.D.2d 656, 647 N.Y.S.2d 970, 1996 N.Y. App. Div. LEXIS 9484 (N.Y. App. Div. 2d Dep't 1996).

Defendant's constitutional rights were not violated by temporary orders for protection of victims where court was empowered by CLS CPL § 530.13 to issue such orders as condition of bail, defendant was nephew of 2 elderly victims who had been attacked in their homes, second crime was committed while defendant was out on bail for first crime, victims were frightened and concerned for their safety, and defense counsel's inclusion in orders did not limit defendant's access to key prosecution witnesses because defense counsel never applied for such access even though court left it open for him to do so. *People v O'Connor*, 242 A.D.2d 908, 662 N.Y.S.2d 951, 1997 N.Y. App. Div. LEXIS 10472 (N.Y. App. Div. 4th Dep't 1997), app. denied, 91 N.Y.2d 895, 669 N.Y.S.2d 9, 691 N.E.2d 1035, 1998 N.Y. LEXIS 485 (N.Y. 1998).

Habeas corpus petitioner seeking reinstatement of bail was improvidently remanded on one indictment where crimes charged in it were less serious than those charged in second indictment, and court failed to

consider factors enumerated in CLS [CPL § 510.30\(2\)\(a\)](#). *People ex rel. Gaudelli v Jacobson*, 251 A.D.2d 690, 675 N.Y.S.2d 557, 1998 N.Y. App. Div. LEXIS 7969 (N.Y. App. Div. 2d Dep't 1998).

A court does not abuse its discretion by setting bail at \$500 and hence such bail cannot be deemed preventive detention under circumstances where the defendant was charged with assault in the second degree, a felony ([Penal Law, § 120.05](#)), assault in the third degree, a misdemeanor ([Penal Law, § 120.00](#)), resisting arrest, ([Penal Law, § 205.30](#)), and the defendant had been arrested seven times in the previous two months and had a bench warrant issued concerning court proceedings on those arrests. [People v Maldonado](#), 95 Misc. 2d 113, 407 N.Y.S.2d 393, 1978 N.Y. Misc. LEXIS 2391 (N.Y. City Crim. Ct. 1978).

Superior court properly set bail for defendant, on indictment, in amount higher than amount set by local criminal court which arraigned defendant on felony complaint where superior court in issuing CLS [CPL § 510.10](#) securing order—its first discretionary release determination in case—conducted inquiry showing that its determination was based on consideration of criteria in CLS [CPL § 510.30](#); any allegations of change of circumstances were irrelevant since securing order was not modification by court of concurrent jurisdiction of first release discretionary determination. [People v Mohammed](#), 171 Misc. 2d 130, 653 N.Y.S.2d 492, 1996 N.Y. Misc. LEXIS 478 (N.Y. Sup. Ct. 1996).

Court's decision to increase bail from \$2,500 to \$10,000, following declaration of mistrial, was supported by, inter alia, petitioner's knowledge of 11 to one vote for conviction, his criminal record, and fact that if convicted he faced mandatory sentence of 4 ½ to 9 years. [People v Baker](#), 188 Misc. 2d 821, 729 N.Y.S.2d 580, 2001 N.Y. Misc. LEXIS 272 (N.Y. Sup. Ct. 2001).

Setting of bail of \$250,000 on first charge and \$25,000 on other charges of criminally selling dangerous drugs was not abuse of discretion where trial judge considered at bail hearing evidence that defendant was one of the major narcotics distributors in New York, selling in excess of 50 pounds of heroin per week, that he made numerous visits to Puerto Rico and other areas outside the country, as well as the defendant's record of prior narcotics arrests. [Bobick v Schaeffer](#), 366 F. Supp. 503, 1973 U.S. Dist. LEXIS 11038 (S.D.N.Y. 1973).

II. Under Former Crim C § 550

7. In general

The purpose of requiring defendant to give bail after arrest is to secure his presence at trial; amount of bail is question of sound discretion and judgment, depending upon primary conditions in particular case, elements properly considered in fixing amount of bail are nature of offense, penalty imposed, probability of defendant's appearance or flight, pecuniary and social condition, general reputation and character, and apparent nature and strength of proof as bearing on probability of his conviction. [People ex rel. Rothensies v Searles](#), 229 A.D. 603, 243 N.Y.S. 15, 1930 N.Y. App. Div. LEXIS 10452 (N.Y. App. Div. 1930).

III. Under Former Crim C § 552

8. In general

The constitutional prohibition against excessive bail does not make mandatory the release of a defendant on bail in all cases, and the applicable statute makes preconviction admission to bail a matter of right in

misdemeanor cases and matter of discretion in all other cases. *People ex rel. Singer v Corbett*, 26 A.D.2d 770, 271 N.Y.S.2d 921, 1966 N.Y. App. Div. LEXIS 3794 (N.Y. App. Div. 4th Dep't 1966).

Although an order denying admission to bail is not appealable, the writ of habeas corpus is available to inquire into the legality of the denial and as to whether or not the court abused its discretion by such denial. *People ex rel. Singer v Corbett*, 26 A.D.2d 770, 271 N.Y.S.2d 921, 1966 N.Y. App. Div. LEXIS 3794 (N.Y. App. Div. 4th Dep't 1966).

Under this section, where defendant has been convicted of a felony, the court has no judicial discretion to grant bail. [*People v Gould*, 7 N.Y.S.2d 556, 169 Misc. 323, 1938 N.Y. Misc. LEXIS 2076 \(N.Y. Sup. Ct. 1938\)](#).

9. Discretion of court

Discretionary power to deny bail in non-capital felony cases cannot be exercised arbitrarily, but denial of bail needs to be buttressed by real showing of reasons, such as fact that defendant had formerly been fugitive and had forfeited bail. [*People ex rel. Shapiro v Keeper of City Prison*, 290 N.Y. 393, 49 N.E.2d 498, 290 N.Y. \(N.Y.S.\) 393, 1943 N.Y. LEXIS 1094 \(N.Y. 1943\)](#).

A defendant should not be penalized by a denial of bail because he exercised his legal right in refusing to waive extradition. *People ex rel. Singer v Corbett*, 26 A.D.2d 770, 271 N.Y.S.2d 921, 1966 N.Y. App. Div. LEXIS 3794 (N.Y. App. Div. 4th Dep't 1966).

The discretionary power which is granted to a court by § 552 to admit to bail, either before or after indictment, defendants who have been charged with the crime of murder is not granted to the court by § 555 as to the same defendants after conviction. [*People v Poblner*, 66 Misc. 2d 209, 320 N.Y.S.2d 257, 1971 N.Y. Misc. LEXIS 1936 \(N.Y. Sup. Ct. 1971\)](#).

10. Effect of prior convictions

Although the legislature has provided for bail and has designated the public official who may grant it, before and after indictment even in a case where it appears that the defendant has been previously convicted of a felony or certain specified misdemeanors or offenses, the legislature has carefully prohibited any public official from admitting to bail anyone who has been twice convicted of a felony. [*People v Wirtschafter*, 305 N.Y. 515, 114 N.E.2d 18, 305 N.Y. \(N.Y.S.\) 515, 1953 N.Y. LEXIS 795 \(N.Y. 1953\)](#).

A compensated surety and its indemnitor on a bail bond may escape forfeiture and liability when the convicted defendant absconds by showing that the release on bail was not permissible under this section because defendant's conviction was for second felony. [*People v Wirtschafter*, 305 N.Y. 515, 114 N.E.2d 18, 305 N.Y. \(N.Y.S.\) 515, 1953 N.Y. LEXIS 795 \(N.Y. 1953\)](#).

Two prior convictions of defendant under § 1141 of the Penal Law, even though the sentences were suspended, would constitute proper predicate for denial of bail under this section. [*People v Bernstein*, 42 Misc. 2d 269, 247 N.Y.S.2d 887, 1964 N.Y. Misc. LEXIS 2102 \(N.Y. Sup. Ct. 1964\)](#).

Where the defendant was sentenced as a second felony offender he could not be admitted to bail, and the Supreme Court did not pass on the merits of his application for a certificate of reasonable doubt since in

any case he would be confined to the local jail and would not be credited for the period of confinement. [*People v Cavalluzzo*, 144 N.Y.S.2d 334, 1955 N.Y. Misc. LEXIS 3742 \(N.Y. Sup. Ct. 1955\)](#), aff'd, 2 A.D.2d 746, 153 N.Y.S.2d 547, 1956 N.Y. App. Div. LEXIS 4744 (N.Y. App. Div. 1st Dep't 1956).

11. —Misdemeanor convictions

A defendant cannot be admitted to bail where he has been twice convicted of any of the misdemeanors herein specified, and it is immaterial that his convictions were by virtue of a plea of guilty to a single indictment in which both such misdemeanors were charged, resulting in imposition of concurrent sentences. [*People v McCall*, 16 A.D.2d 313, 228 N.Y.S.2d 52, 1962 N.Y. App. Div. LEXIS 9811 \(N.Y. App. Div. 4th Dep't 1962\)](#).

Under this section, and § 555, a convicted defendant cannot be released on bail pending appeal if he has been twice convicted of any of the misdemeanors listed, notwithstanding one of them was committed in another state where the conviction took place. [*People v Panico*, 41 Misc. 2d 841, 246 N.Y.S.2d 675, 1964 N.Y. Misc. LEXIS 2186 \(N.Y. Sup. Ct. 1964\)](#).

IV. Under Former Crim C § 553

12. In general

The only judicial officer authorized to admit to bail a person arrested either before or after examination before a magistrate under a warrant to arrest him as a fugitive from justice, is a justice of the Supreme Court or a county judge. A city magistrate has no such authority. [*In re Barlow*, 141 A.D. 640, 127 N.Y.S. 542, 1910 N.Y. App. Div. LEXIS 3926 \(N.Y. App. Div. 1910\)](#).

The constitutional prohibition against excessive bail does not make mandatory the release of a defendant on bail in all cases, and the applicable statute makes preconviction admission to bail a matter of right in misdemeanor cases and matter of discretion in all other cases. *People ex rel. Singer v Corbett*, 26 A.D.2d 770, 271 N.Y.S.2d 921, 1966 N.Y. App. Div. LEXIS 3794 (N.Y. App. Div. 4th Dep't 1966).

Insanity plea precludes, admission to bail pending decision of issue of insanity. [*People v Watson*, 35 N.Y.S. 852, 14 Misc. 430, 1895 N.Y. Misc. LEXIS 889 \(N.Y. County Ct. 1895\)](#).

13. Discretion of court

Continuance on bail is not absolute right, as court has discretion to commit to custody. *People ex rel. Sweeney v Fallon*, 156 A.D. 895, 141 N.Y.S. 303, 1913 N.Y. App. Div. LEXIS 5782 (N.Y. App. Div. 1913).

Admission to bail in all cases other than misdemeanors is matter of discretion. [*American Civil Liberties Union, Inc. v McAdoo*, 229 A.D. 511, 242 N.Y.S. 696, 1930 N.Y. App. Div. LEXIS 10431 \(N.Y. App. Div. 1930\)](#).

The admission of a defendant to bail in a felony case is a matter of discretion, and each case rests upon its own peculiar facts and, also, heed must be given to the constitutional injunction against “excessive bail” [*People v Gigante*, 9 Misc. 2d 881, 173 N.Y.S.2d 971, 1957 N.Y. Misc. LEXIS 2520 \(N.Y. Gen. Sess. 1957\)](#).

While the statute gives the court discretion to refuse bail or to revoke bail already granted, denial of bail is no light matter and needs to be buttressed by a real showing of reason therefor. *People ex rel. La Force v Skinner*, 65 Misc. 2d 884, 319 N.Y.S.2d 10, 1971 N.Y. Misc. LEXIS 1805 (N.Y. Sup. Ct. 1971).

14. Criteria applicable

Discretionary power to deny bail in non-capital felony cases cannot be exercised arbitrarily, but must be buttressed on sufficient reason, such as fact that defendant had formerly been fugitive and had forfeited bail. *People ex rel. Shapiro v Keeper of City Prison*, 290 N.Y. 393, 49 N.E.2d 498, 290 N.Y. (N.Y.S.) 393, 1943 N.Y. LEXIS 1094 (N.Y. 1943).

Elements properly considered in fixing bail are nature of offense, penalty imposed, probability of defendant's appearance of flight, pecuniary and social condition, general reputation and character, and apparent nature and strength. *People ex rel. Shapiro v Keeper of City Prison*, 265 A.D. 474, 39 N.Y.S.2d 526, 1943 N.Y. App. Div. LEXIS 6327 (N.Y. App. Div. 1943), aff'd, 290 N.Y. 393, 49 N.E.2d 498, 290 N.Y. (N.Y.S.) 393, 1943 N.Y. LEXIS 1094 (N.Y. 1943).

15. Right to bail in particular cases

The court had jurisdiction to admit to bail prisoner charged with theft of \$780,000. *People ex rel. Lobell v McDonnell*, 296 N.Y. 109, 71 N.E.2d 423, 296 N.Y. (N.Y.S.) 109, 1947 N.Y. LEXIS 954 (N.Y. 1947).

A defendant should not be penalized by a denial of bail because he exercised his legal right in refusing to waive extradition. *People ex rel. Singer v Corbett*, 26 A.D.2d 770, 271 N.Y.S.2d 921, 1966 N.Y. App. Div. LEXIS 3794 (N.Y. App. Div. 4th Dep't 1966).

Where the relator continuously maintained a home where he resided with his wife, and voluntarily surrendered to the police for arraignment on five indictments and made every appearance in court that had been required of him, it was an abuse of discretion to revoke his bail where the only justification for the revocation was the testimony of a detective that the defendant may have been involved in other crimes. *People ex rel. La Force v Skinner*, 65 Misc. 2d 884, 319 N.Y.S.2d 10, 1971 N.Y. Misc. LEXIS 1805 (N.Y. Sup. Ct. 1971).

Where a prisoner and his counsel had 86 days in which to locate alleged alibi witness, the refusal to reduce bail or to grant a continuance on the day the trial opened, did not so prejudice prisoner's defense as to amount to a denial of due process. *United States ex rel. Hyde v McMann*, 263 F.2d 940, 1959 U.S. App. LEXIS 4376 (2d Cir. N.Y. 1959), cert. denied, 360 U.S. 937, 79 S. Ct. 1462, 3 L. Ed. 2d 1549, 1959 U.S. LEXIS 727 (U.S. 1959).

16. Appellate review of bail denial

On habeas corpus return, the court may determine if court refusing bail abused its discretion unreasonably or illegally. *People ex rel. Shapiro v Keeper of City Prison*, 290 N.Y. 393, 49 N.E.2d 498, 290 N.Y. (N.Y.S.) 393, 1943 N.Y. LEXIS 1094 (N.Y. 1943).

Although an order denying admission to bail is not appealable, the writ of habeas corpus is available to inquire into the legality of the denial and as to whether or not the court abused its discretion by such

denial. *People ex rel. Singer v Corbett*, 26 A.D.2d 770, 271 N.Y.S.2d 921, 1966 N.Y. App. Div. LEXIS 3794 (N.Y. App. Div. 4th Dep't 1966).

V. Under Former Crim C § 555

17. In general

The purpose of this section is to prohibit admission to bail of a defendant convicted of a felony or of one of the misdemeanors specified in § 552, if he had been previously convicted of a felony or of two of the specified misdemeanors or if he had been convicted twice of any one of the specified misdemeanors. *People v McCall*, 16 A.D.2d 313, 228 N.Y.S.2d 52, 1962 N.Y. App. Div. LEXIS 9811 (N.Y. App. Div. 4th Dep't 1962).

The constitutional provisions requiring that bail not be excessive do not grant an absolute right to bail. *People v Pobliner*, 66 Misc. 2d 209, 320 N.Y.S.2d 257, 1971 N.Y. Misc. LEXIS 1936 (N.Y. Sup. Ct. 1971).

New York's denial of bail to recidivists pending their appeal has a rational basis and is not an unreasonable or arbitrary classification; and the denial of bail pending appeal does not violate either the Eighth or Fourteenth Amendments to the United States Constitution. *United States ex rel. Klein v Deegan*, 290 F. Supp. 66, 1968 U.S. Dist. LEXIS 9322 (S.D.N.Y. 1968).

With certain exceptions, a defendant in a criminal case may be released on bail pending appeal, but only if execution of the judgment has been stayed. *United States ex rel. Siegal v Follette*, 290 F. Supp. 632, 1968 U.S. Dist. LEXIS 9352 (S.D.N.Y. 1968).

18. Right to bail under particular circumstances

In a reckless driving prosecution there is no right to bail under a temporary stay of proceedings. *People v Bowles*, 280 A.D. 476, 114 N.Y.S.2d 353, 1952 N.Y. App. Div. LEXIS 3507 (N.Y. App. Div. 1952).

This section prohibits the granting of bail on appeal to one convicted of a crime punishable with life imprisonment or of a felony committed while armed. *People v Mummiani*, 23 Misc. 2d 217, 200 N.Y.S.2d 896, 1960 N.Y. Misc. LEXIS 3432 (N.Y. Sup. Ct. 1960).

Under the provision of this section that a defendant who has appealed from a judgment of conviction may not be admitted to bail if the felony was committed while armed with a weapon, appellant could not be admitted to bail where he was convicted of assault in the second degree by aiming and discharging a loaded rifle at another person. *People v Dachille*, 27 Misc. 2d 581, 212 N.Y.S.2d 199, 1961 N.Y. Misc. LEXIS 3376 (N.Y. Sup. Ct. 1961).

A prisoner who was arraigned on charges of crimes allegedly committed while on parole from a prior sentence was not entitled to be set free on bail pending trial of those charges, where he was restrained by virtue of a warrant issued for the alleged parole violation. *Hardy v Warden of Queens House of Detention for Men*, 56 Misc. 2d 332, 288 N.Y.S.2d 541, 1968 N.Y. Misc. LEXIS 1661 (N.Y. Sup. Ct. 1968).

The discretionary power which is granted to a court by § 552 to admit to bail, either before or after indictment, defendants who have been charged with the crime of murder is not granted to the court by § 555 as to the same defendants after conviction, by § 555, the Legislature has declared that pending appeal,

a person convicted of a class A felony may not be admitted to bail. [*People v Poblner*, 66 Misc. 2d 209, 320 N.Y.S.2d 257, 1971 N.Y. Misc. LEXIS 1936 \(N.Y. Sup. Ct. 1971\)](#).

Where defendant was convicted of bookmaking under Penal Law § 986 and sentenced to 180 days and fined \$500, such sentence warranted certificate of reasonable doubt and defendant's admission to bail pending appeal. [*People v Spinello*, 104 N.Y.S.2d 586, 1951 N.Y. Misc. LEXIS 1781 \(N.Y. County Ct. 1951\)](#).

19. —Pending certificate of reasonable doubt

A defendant convicted of a crime not punishable with death, who has obtained an order directing the district attorney to show cause why a certificate of reasonable doubt should not be granted and an order directing a stay of execution in the meantime, cannot be admitted to bail until the hearing and determination of the motion for a certificate and the granting thereof. [*People ex rel. Hummel v Reardon*, 186 N.Y. 164, 78 N.E. 860, 186 N.Y. \(N.Y.S.\) 164, 1906 N.Y. LEXIS 1098 \(N.Y. 1906\)](#).

Where a defendant sentenced to pay a fine only, takes an appeal, obtains a certificate of reasonable doubt, and an order is made admitting him to bail, such certificate is in effect, granted upon condition that the defendant will execute an undertaking conditioned for the payment of such fine, and the collection of such fine is not stayed until such undertaking is executed, in case the judgment of conviction is affirmed. [*People v Connolly*, 88 A.D. 302, 84 N.Y.S. 617, 1903 N.Y. App. Div. LEXIS 3146 \(N.Y. App. Div. 1903\)](#).

Where a defendant is convicted of a crime and is sentenced to imprisonment only, if he takes an appeal from the judgment of conviction and obtains a certificate of reasonable doubt, he cannot be compelled to enter upon the service of his term of imprisonment during the pending of such appeal, but must be retained in the custody of the sheriff during the interim, unless an order is made admitting him to bail and an undertaking is given to the effect that he will surrender himself in execution of the judgment in case it is affirmed. [*People v Connolly*, 88 A.D. 302, 84 N.Y.S. 617, 1903 N.Y. App. Div. LEXIS 3146 \(N.Y. App. Div. 1903\)](#).

After conviction there is no right to bail, constitutional or otherwise, in the absence of a certificate of reasonable doubt. *People ex rel. Epton v Nenna*, 25 A.D.2d 518, 267 N.Y.S.2d 267, 1966 N.Y. App. Div. LEXIS 4900 (N.Y. App. Div. 1st Dep't 1966).

A defendant convicted of felony is not entitled to bail pending appeal on issuance of certificate of reasonable doubt. [*People v Gould*, 7 N.Y.S.2d 556, 169 Misc. 323, 1938 N.Y. Misc. LEXIS 2076 \(N.Y. Sup. Ct. 1938\)](#).

20. —Prior convictions

Although the legislature has provided for bail and has designated the public official who may grant it, before and after indictment even in a case where it appears that the defendant has been previously convicted of a felony or certain specified misdemeanors or offenses, the legislature has carefully prohibited any public official from admitting to bail anyone who has been twice convicted of a felony [*People v Wirtschafter*, 305 N.Y. 515, 114 N.E.2d 18, 305 N.Y. \(N.Y.S.\) 515, 1953 N.Y. LEXIS 795 \(N.Y. 1953\)](#).

A defendant charged with a felony may be admitted to bail before or after indictment, prior to his conviction, even though there is reason to believe that the crime charged is his second felony offense but, after his conviction of second felony, though there be a stay of proceedings by a certificate of the judge of the Court of Appeals, bail is prohibited. [*People v Wirschafter*, 305 N.Y. 515, 114 N.E.2d 18, 305 N.Y. \(N.Y.S.\) 515, 1953 N.Y. LEXIS 795 \(N.Y. 1953\)](#).

If a defendant with no prior record of conviction were charged in a single indictment or information with three misdemeanors of the types specified in § 552, he would still be eligible for admission to bail because the convictions were simultaneous and there was no prior conviction. [*People v McCall*, 16 A.D.2d 313, 228 N.Y.S.2d 52, 1962 N.Y. App. Div. LEXIS 9811 \(N.Y. App. Div. 4th Dep't 1962\)](#).

Although surety's examination of criminal court records indicated that principal's prior record, making him ineligible for bail, had been omitted by clerical error from records delivered to court, order granting principal's bail pending appeal from conviction of second degree selling of dangerous drug was valid. *People v Public Service Mut. Ins. Co.*, 43 A.D.2d 961, 352 N.Y.S.2d 651, 1974 N.Y. App. Div. LEXIS 5786 (N.Y. App. Div. 2d Dep't 1974).

While this section permits a defendant charged with a felony to be admitted to bail before or after indictment, even though there is reason to believe that the crime charged is his second felony offense, release on bail is prohibited after his conviction of the second felony. [*People ex rel. Levy v Nenna*, 36 Misc. 2d 394, 232 N.Y.S.2d 198, 1962 N.Y. Misc. LEXIS 3170 \(N.Y. Sup. Ct. 1962\)](#).

Under this section, a defendant could not be admitted to bail after he had been convicted of criminally receiving stolen property and possessing a pistol, both as misdemeanors, and had had two prior felony convictions, thereby falling within the coverage of § 552. [*People v Stolzenberg*, 40 Misc. 2d 177, 242 N.Y.S.2d 675, 1963 N.Y. Misc. LEXIS 1887 \(N.Y. Sup. Ct. 1963\)](#).

Two prior convictions of defendant under § 1141 of the Penal Law, even though the sentences were suspended, would constitute proper predicate for denial of bail under this section. [*People v Bernstein*, 42 Misc. 2d 269, 247 N.Y.S.2d 887, 1964 N.Y. Misc. LEXIS 2102 \(N.Y. Sup. Ct. 1964\)](#).

Research References & Practice Aids

Federal Aspects:

Release of defendant from custody, [*USCS Federal Rules of Criminal Procedure, Rule 46*](#).

Jurisprudences:

8 Am Jur 2d, Bail and Recognizance §§ 42 et seq.

81 Am Jur 2d, Witnesses § 4.

18 Am Jur Proof of Facts 2d 149, Excessive Bail.

Annotations:

Bail jumping after conviction, failure to surrender or to appear for sentencing, and the like, as contempt. [34 ALR2d 1100](#).

Insanity of accused as affecting right to bail in criminal case. [11 ALR3d 1385](#).

Right of bail in proceedings in juvenile courts. [53 ALR3d 848](#).

Effect of abolition of capital punishment on procedural rules governing crimes punishable by death—post-Furman decisions. [71 ALR3d 453](#).

Pretrial preventive detention by state court. [75 ALR3d 956](#).

Application of state statutes establishing pretrial release of accused on personal recognizance as presumptive form of release. [78 ALR3d 780](#).

What constitutes a risk of flight so as to render a federal criminal defendant ineligible for bail prior to sentence or pending appeal. [79 ALR Fed 460](#).

What is “a substantial question of law or fact likely to result in reversal or an order for a new trial” pursuant to [18 USCS § 3143\(b\)\(2\)](#) respecting bail pending appeal. [79 ALR Fed 673](#).

Supreme Court’s construction and application of provision of *Federal Constitution’s Eighth Amendment* that excessive bail shall not be required. [95 L Ed 2d 1010](#).

Texts:

Bogacz, New York Juvenile Delinquency Practice (1998, LLP) p 857.

2 [New York Appellate Practice \(Matthew Bender\) § 13.05](#).

[New York Criminal Practice Ch. 13](#).

Hierarchy Notes:

[NY CLS CPL](#)

[NY CLS CPL, Pt. THREE, Title P](#)

[NY CLS CPL, Pt. THREE, Title P, Art. 510](#)

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NY CLS CPL § 520.10

Current through 2018 Chapter 1

New York Consolidated Laws Service > Criminal Procedure Law > Part THREE Special Proceedings and Miscellaneous Procedures > Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment > Article 520 Bail and Bail Bonds

§ 520.10. Bail and bail bonds; fixing of bail and authorized forms thereof

1. The only authorized forms of bail are the following:
 - (a) Cash bail.
 - (b) An insurance company bail bond.
 - (c) A secured surety bond.
 - (d) A secured appearance bond.
 - (e) A partially secured surety bond.
 - (f) A partially secured appearance bond.
 - (g) An unsecured surety bond.
 - (h) An unsecured appearance bond.
 - (i) Credit card or similar device; provided, however, that notwithstanding any other provision of law, any person posting bail by credit card or similar device also may be required to pay a reasonable administrative fee. The amount of such administrative fee and the time and manner of its payment shall be in accordance with the system established pursuant to subdivision four of section 150.30 of this chapter or paragraph (j) of subdivision two of section two hundred twelve of the judiciary law, as appropriate.
2. The methods of fixing bail are as follows:
 - (a) A court may designate the amount of the bail without designating the form or forms in which it may be posted. In such case, the bail may be posted in either of the forms specified in paragraphs (g) and (h) of subdivision one;
 - (b) The court may direct that the bail be posted in any one of two or more of the forms specified in subdivision one, designated in the alternative, and may designate different amounts varying with the forms;[.]¹

History

The bracketed punctuation has been inserted by the Publisher.

Add, L 1970, ch 996, § 1, eff Sept 1, 1971; amd, L 1972, ch 784, § 1, eff Sept 1, 1972; L 1986, ch 708, § 2; L 1987, ch 805, § 3, eff Aug 7, 1987; [L 2005, ch 457, § 4](#), eff Jan 1, 2006 (see 2010 note below).

Annotations

Notes

Editor's Notes:

[Laws 2010, ch 528, § 5](#), eff Sept 17, 2010, deemed eff on and after Sept 1, 2009, amended [Laws 2005, ch 457, § 7](#), so as to delete an expiration date of August 9, 2010, applicable to the amendment of subdivision 1, paragraph (i).

Commission Staff Notes:

The principal importance of this section lies in subdivision 1, which provides for the furnishing of bail in certain forms not presently authorized.

The first four enumerated forms are apparently the only ones recognized by the Criminal Code: cash bail (§ 586), an insurance company or “professional” bail bond (§§ 554-b, 554-c, 557-a), and either a surety or appearance bond which is in effect fully secured by real or personal property (§§ 556-b, 556-c, 569, 571). These are the only bail choices open to a judge who is willing to permit the defendant to be at liberty during the pendency of a criminal action, but not on his own recognizance. One of the difficulties is that, when the crime charged is a serious one, the average judge, even though regarding the defendant as a good risk from the standpoint of future appearance, is inclined to fix fairly high bail. This, frequently, is beyond the defendant’s reach when, as under present law, it has to be furnished in the form of cash or its equivalent, or an insurance company bond (for which the surety may require substantial security), or a fully secured bail bond.

It is out of these considerations that the proposal, while retaining the existing forms (pars a–d), augments the list with further and less demanding ones. These consist of a “partially secured” and an “unsecured” bail bond, each of which may be either an “appearance bond” (where the defendant alone is the “obligor”) or a “surety bond” (pars e–h; § 510.10[11, 14, 15, 18, 19]). The “unsecured” bond constitutes a bare and wholly unsecured, though legally enforceable, obligation to pay a designated sum of money in the event of default of appearance (§ 510.10[19]). The “partially secured” bond differs only in that it is secured by a proportionately small deposit of cash, not exceeding ten percent of the undertaking (id. [18]).

The theory of these innovations is that a judge who, despite an inclination to release a “good risk” defendant, feels impelled to fix bail in an amount which may be beyond the defendant’s means under the current system, may achieve that release without reducing the bail sum. In short, by relaxing the forms of bail rather than the amount thereof, the unsecured and partially secured bonds should provide a method of release somewhere between bail as presently authorized and release on one’s own recognizance; and should furnish a method of reducing to some extent that portion of our prison population consisting of unconvicted defendants.

Subdivision 2, or at least paragraph (b) thereof, is designed to render use of these new bail forms more attractive to judges.

Paragraph (a) merely codifies existing practice under existing bail forms. A judge ordinarily fixes bail merely by stating the amount thereof. In such case, it is usually posted, if at all, in the form of an insurance company bond (in New York City) or a secured bond (in most other localities), with cash bail, of course, always being an acceptable alternative. The instant provision expressly stamps any of those forms, and no other, acceptable when bail is fixed solely by designation of the amount with no reference to form.

Under paragraph (b), however, the judge may not only designate alternative forms—including the unsecured and partially secured bond—but may, if he chooses, make the amount of bail vary with the form in which it is furnished. This flexibility might well prove useful to a judge who, for example, is willing to release a defendant upon \$1000 bail in the form of cash or an insurance company or secured bond, but not upon an unsecured bond in that amount. Under the proposed provision, he could fix the \$1000 figure for the standard forms and, as an alternative, agree to accept an unsecured bond in the amount of \$3000 or any other sum which he might deem appropriate.

Amendment Notes:

2005. Chapter 457, § 4 amended:

Sub 1, par (i) by deleting at fig 1 “where the principal is charged with a violation under the vehicle and traffic law”, at fig 2 “(i)” and adding the matter in italics.

Notes to Decisions

I. Generally

1. In general

II. Under Former Crim C § 586

2. In general

3. Posting of cash bail

4. Application of bail monies

5.—Monies belonging to third parties

III. Under Former Crim C § 589

6. In general

I. Generally

1. In general

[CPL 520.10\(2\)\(b\)](#) prohibits a court from fixing only one form of bail. Accordingly, it was error to set a detainee's bail at \$20,000, cash only, thereby preventing the detainee from later securing a bail bond. [People ex rel. McManus v Horn, 18 N.Y.3d 660, 944 N.Y.S.2d 448, 2012 NY Slip Op 2121, 967 N.E.2d 671, 2012 N.Y. LEXIS 509 \(N.Y. 2012\).](#)

Judgment of Supreme Court at Special Term which sustained a writ of habeas corpus and reduced amount of petitioner's bail fixed by county court from \$100,000 to \$35,000 was required to be affirmed, since there was a constitutionally rational basis for its determination. [People ex rel. Mitchell v McNulty, 53 A.D.2d 790, 385 N.Y.S.2d 150, 1976 N.Y. App. Div. LEXIS 13580 \(N.Y. App. Div. 3d Dep't 1976\).](#)

Because neither [N.Y. Crim. Proc. Law § 520.10\(2\)\(a\)](#) nor (b) precluded a court from setting bail in a particular amount and specifying only one form in which that bail might be posted, and because both subdivisions were written permissively, an inmate was not entitled to habeas corpus relief when two forms of bail were not provided. [People ex rel. Meis v Horn, 888 N.Y.S.2d 392, 2009 NY Slip Op 29432, 26 Misc. 3d 317, 2009 N.Y. Misc. LEXIS 2928 \(N.Y. Sup. Ct. 2009\),](#) [aff'd, 77 A.D.3d 571, 909 N.Y.S.2d 357, 2010 NY Slip Op 7611, 2010 N.Y. App. Div. LEXIS 7672 \(N.Y. App. Div. 1st Dep't 2010\).](#)

II. Under Former Crim C § 586

2. In general

Bond is substituted for cash bail. [In re Lexington Surety & Indem. Co., 272 N.Y. 210, 5 N.E.2d 204, 272 N.Y. \(N.Y.S.\) 210, 1936 N.Y. LEXIS 892 \(N.Y. 1936\),](#) [reh'g denied, 273 N.Y. 635, 7 N.E.2d 731, 273 N.Y. \(N.Y.S.\) 635, 1937 N.Y. LEXIS 1357 \(N.Y. 1937\).](#)

Where order for return of cash bail is not made on dismissal of complaint against defendant, statute of limitations begins to run only after demand by third person depositing bail, despite lapse of time. [People ex rel. Donovan v Rounati, 258 A.D. 585, 17 N.Y.S.2d 199, 1940 N.Y. App. Div. LEXIS 8241 \(N.Y. App. Div. 1940\).](#)

Under common law, cash could not be accepted as or in lieu of bail; it is acceptable only when authorized by statute. [Badolato v Molinari, 174 N.Y.S. 512, 106 Misc. 342, 1919 N.Y. Misc. LEXIS 894 \(N.Y. Sup. Ct. 1919\).](#)

3. Posting of cash bail

A police justice has no authority to accept a cash deposit in lieu of bail. Such deposit must be made with the county treasurer, and a police justice as such may not act as his agent in receiving it. [McNamara v Wallace, 97 A.D. 76, 89 N.Y.S. 591, 1904 N.Y. App. Div. LEXIS 2565 \(N.Y. App. Div. 1904\).](#)

Moneys deposited pursuant to § 123 of the Domestic Relations Law by a defendant in a filiation proceeding in a children's court should not be paid over to the county treasurer. 1953 Ops St Compt File #6101.

Where magistrate improperly accepted cash bail of \$500 in a felony proceeding and defendant, who is entitled to return thereof, cannot be found, such money should be remitted to the county treasurer. 1954 Ops St Compt File #6726.

Depository of cash bail should be office of county treasurer. Op Comptroller, 9 St Dept 456.

Inquiries of cash bail sureties must end if the defendant establishes that the surety is in legitimate possession of the bail money, and that the money is not the fruits of illegal activity. [*People v Shi Shen Yu*, 2015 NY Slip Op 25382, 50 Misc. 3d 786, 23 N.Y.S.3d 814, 2015 N.Y. Misc. LEXIS 4117 \(N.Y. Sup. Ct. 2015\).](#)

4. Application of bail monies

Money deposited in lieu of bail under this section is deemed money of the defendant, for the purposes of this section, and although it was in fact furnished by a third person it may be applied in payment of any fine imposed upon the defendant. [*People ex rel. Gilbert v Laidlaw*, 102 N.Y. 588, 7 N.E. 910, 102 N.Y. \(N.Y.S.\) 588, 2 N.Y. St. 537, 1886 N.Y. LEXIS 883 \(N.Y. 1886\).](#)

In all cases where money is deposited in lieu of bail it may be applied in payment of any fine imposed. [*Lichter v Raff*, 266 N.Y.S. 748, 149 Misc. 53, 1933 N.Y. Misc. LEXIS 1336 \(N.Y. City Ct. 1933\).](#)

Although cash deposited by a third person in lieu of bail for a defendant in a criminal action may be applied upon a fine and costs against him, it is exempt from levy on execution against him in a civil action entirely disconnected from the criminal proceeding. [*McShane v Pinkham*, 19 N.Y.S. 969 \(N.Y. City Ct. 1892\).](#)

5. —Monies belonging to third parties

Although there is a presumption that money deposited instead of bail belongs to the party for whose appearance it is held as security, such presumption is not controlling when the evidence is uncontradicted that it was deposited by a third person to whom the sheriff gave a receipt for the money when deposited. [*Finelite v Sonberg*, 75 A.D. 455, 78 N.Y.S. 338, 12 N.Y. Ann. Cas. 1, 1902 N.Y. App. Div. LEXIS 2185 \(N.Y. App. Div. 1902\).](#)

Although money deposited in lieu of bail belonged to an estate of which the accused was executor, it cannot be recovered after forfeiture. [*Sutherland v St. Lawrence County*, 101 A.D. 299, 91 N.Y.S. 962, 1905 N.Y. App. Div. LEXIS 359 \(N.Y. App. Div. 1905\)](#), reh'g denied, 103 A.D. 597, 93 N.Y.S. 958, 1905 N.Y. App. Div. LEXIS 1205 (N.Y. App. Div. 1905).

Money deposited in lieu of bail by a third person for the appearance of the defendant, who thereafter appeared and was examined, is freed from its burden, the bail being exonerated. [*Cohen v Bruere*, 162 N.Y.S. 75, 96 Misc. 609, 1916 N.Y. Misc. LEXIS 1212 \(N.Y. Sup. Ct. 1916\)](#), aff'd, 179 A.D. 884, 165 N.Y.S. 1080, 1917 N.Y. App. Div. LEXIS 6688 (N.Y. App. Div. 1917).

Judgment creditors were not entitled to money represented by third party's check deposited as bail for judgment debtor in criminal proceeding the money should be paid to third party. [*Cogliano v Ippolito*, 16 Misc. 2d 95, 182 N.Y.S.2d 775, 1959 N.Y. Misc. LEXIS 4277 \(N.Y. Sup. Ct. 1959\).](#)

Cash bail put up by a bondsman should be returned to him or to his distributees if not forfeited for failure of defendant to appear. 1963 Ops St Compt #326.

III. Under Former Crim C § 589

6. In general

In all cases where money is deposited in lieu of bail it may be applied in payment of any fine imposed. [*Lichter v Raff*, 266 N.Y.S. 748, 149 Misc. 53, 1933 N.Y. Misc. LEXIS 1336 \(N.Y. City Ct. 1933\)](#).

Execution against cash bail is not permitted. [*McShane v Pinkham*, 19 N.Y.S. 969 \(N.Y. City Ct. 1892\)](#).

Depository of cash bail should be county treasurer. Op Comptroller, 9 St Dept 456.

Opinion Notes

Agency Opinions

I. Generally

1. In general

Duration and effectiveness bail bonds is governed by the Criminal Procedure Law, storage of bail bond records by the county clerk, and the destruction of obsolete records should be done in accordance with the time limits set forth in the CPL. [*1987 NY Op Att'y Gen No. 87-76*, 1987 N.Y. AG LEXIS 23](#).

A village may not invest cash bail on deposit with the village justice court. 1978 Op St Compt File #761.

Cash bail still unclaimed six years after bail is exonerated in a local criminal court becomes the property of the municipality. Opn No. 72-669 superseded to extent inconsistent with this opinion. 1980 Op St Compt File #515.

II. Under Former Crim C § 586

2. Posting of cash bail

Moneys deposited in lieu of giving bail are not to be considered as Court and Trust Funds by the Department of Audit and Control under the Uniform System of Accounts for Counties. 1960 NY Ops Att'y Gen Oct 17.

Research References & Practice Aids

Cross References:

This section referred to in § 520.15.

Federal Aspects:

Obstructing justice by false bail, [*18 USCS § 1506*](#).

Release and detention authority generally, [*18 USCS § 3141*](#).

Release or detention of a defendant pending sentence or appeal, [*18 USCS § 3143*](#).

Penalty for failure to appear, [*18 USCS § 3146*](#).

Penalty for an offense committed while on release, [*18 USCS § 3147*](#).

Sanctions for violation of a release condition, [*18 USCS § 3148*](#).

Appeal by or on behalf of United States from bail order, [*18 USCS § 3731*](#).

Release of defendant from custody, [*USCS Federal Rules of Criminal Procedure, Rule 46*](#).

Jurisprudences:

8 Am Jur 2d, Bail and Recognizance §§ 62 et seq.

3A Am Jur Legal Forms 2d, Bail and Recognizance §§ 35:31 et seq.

8 Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure, Form 17.

Law Reviews:

Ares, Rankin, Sturz, Manhattan bail project: an interim report on the use of pre-trial parole. 38 NYU L Rev 67.

Annotations:

Right to apply cash bail to payment of fine. [*92 ALR2d 1084*](#).

Pretrial preventive detention by state court. [*75 ALR3d 956*](#).

Validity of statute abolishing commercial bail bond business. [*19 ALR4th 355*](#).

Liability of surety on bail bond taken without authority. [*27 ALR4th 246*](#).

Bail: duration of surety's liability on posttrial bail bond. [*32 ALR4th 575*](#).

Bail: effect on liability of bail bond surety of state's delay in obtaining indictment or bringing defendant to trial. [*32 ALR4th 600*](#).

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction. [*35 ALR4th 1192*](#).

Texts:

[*New York Criminal Practice Ch. 13*](#).

Hierarchy Notes:

[*NY CLS CPL*](#)

[NY CLS CPL, Pt. THREE, Title P](#)

[NY CLS CPL, Pt. THREE, Title P, Art. 520](#)

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NY CLS CPL § 520.15

Current through 2018 Chapter 1

New York Consolidated Laws Service > Criminal Procedure Law > Part THREE Special Proceedings and Miscellaneous Procedures > Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment > Article 520 Bail and Bail Bonds

§ 520.15. Bail and bail bonds; posting of cash bail

1. Where a court has fixed bail pursuant to subdivision two of section 520.10, at any time after the principal has been committed to the custody of the sheriff pending the posting thereof, cash bail in the amount designated in the order fixing bail may be posted even though such bail was not specified in such order. Cash bail may be deposited with (a) the county treasurer of the county in which the criminal action or proceeding is pending or, in the city of New York with the commissioner of finance, or (b) the court which issued such order, or (c) the sheriff in whose custody the principal has been committed. Upon proof of the deposit of the designated amount the principal must be forthwith released from custody.
2. The person posting cash bail must complete and sign a form which states (a) the name, residential address and occupation of each person posting cash bail; and (b) the title of the criminal action or proceeding involved; and (c) the offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and (d) the name of the principal and the nature of his involvement in or connection with such action or proceeding; and (e) that the person or persons posting cash bail undertake that the principal will appear in such action or proceeding whenever required and will at all times render himself amenable to the orders and processes of the court; and (f) the date of the principal's next appearance in court; and (g) an acknowledgment that the cash bail will be forfeited if the principal does not comply with any requirement or order of process to appear in court; and (h) the amount of money posted as cash bail.
3. Money posted as cash bail is and shall remain the property of the person posting it unless forfeited to the court.

History

Add, L 1970, ch 996, § 1; amd, L 1978, ch 655, § 40, eff July 25, 1978; L 1984, ch 384, § 2, eff Sept 1, 1984.

Annotations

Commentary

PRACTICE INSIGHTS:

Using Creative Bail Strategies to Secure Defendant's Release.

By Daniel Nobel, Esq., Member of New York Bar.

General Editor, John M. Castellano, Esq., Member of New York Bar.

INSIGHT

Defense counsel should seek and use the full range of available options in attempting to secure a defendant's release through bail. To this end, counsel should consider not only the amount of bail, but the form as well. Cash bail is always an option and is generally preferred when the necessary funds can be raised. But where funds are limited, significant relief may be available to the defendant if counsel prevails in utilizing a bail bond that substitutes a financial obligation, by the defendant or someone acting on the defendant's behalf, for a cash deposit that may not be within the means of the defendant.

ANALYSIS

[CPL § 500.10](#) defines the terms used in CPL Article 520 regarding the different forms of bail bonds that are authorized by the CPL. These definitions are divided into two categories: one defining the role of individuals who make a financial commitment to satisfy bail conditions and the other defining the forms that such a commitment can assume.

The statute refers to the defendant as the "principal" and a person who executes a bail bond as an "obligor." The term "bail" is the overarching term applicable to cash bail or a bail bond. The term "bail bond" applies to any "written undertaking, executed by one or more obligors" which guarantees a defendant's appearance in court during the pendency of a criminal action. The statute also refers to numerous forms of bail bonds, depending on who is making the financial commitment and whether it is secured or not. Bail bonds may also require compliance with other "orders and processes of the court" that may be incorporated into the securing order. Such conditions might include or exclude certain behaviors, limit a principal's travel or require a principal to avoid contact with designated parties, especially a victim or a witness.

Counsel should always give consideration to posting cash bail rather than using a bond. Cash bail is the better course for several reasons. First, the cash bail amount is ordinarily far less than the amount required for a bond. Judges often set two separate bail amounts, one for cash bail and one for bonds, and make the bond amount much greater than the cash bail. Second, cash bail will be returned at the end of the proceedings as long as the defendant appears as required, while a bail bond can only be obtained by paying a hefty fee, often 10% or more of the face amount of the bond, that will never be returned. Third, in addition to the fee, the bond company will often want to hold substantial additional cash and require promises for the full amount of the bond. As a result, those putting up the money and making the financial commitment required for a bond may lose much more than if cash bail is used. Note that posting cash bail is not a means to escape the scrutiny of assets attendant to a bail bond because [CPL § 520.15\(2\)](#) specifies a form that the person posting cash bail must complete requiring information similar to that necessary for

a bail bond. And the person posting cash bail is subject to the same examination in a bail sufficiency hearing under [CPL § 520.30\(1\)](#) as is an obligor.

Bail bonds do present one advantage over cash bail: They can often be obtained with a lesser initial outlay of cash. This is particularly true where the court specifies only one bail amount. That amount may be satisfied either by cash bail or by unsecured bond, and the fee required for the bond plus the additional sums required by the bail bondsman will be less than the full amount of the bail. This calculus may be altered to some degree by the use of credit cards to satisfy cash bail. Credit will frequently be accepted to post bail, pursuant to the authority in [CPL § 520.10\(1\)\(i\)](#), and where sufficient cash and credit are available, this again may be the best option.

Counsel may find that even after informing themselves of the range of options the CPL provides in structuring a bail bond, local jurisdictions have, by custom, marked preferences for one type of bail over other authorized forms. Counsel who appears less often in a particular venue should sharpen his bail application and increase the chances of obtaining an order of recognizance or bail by doing due diligence at the clerk's office or contacting local counsel.

If the defendant cannot post either cash bail or obtain a bond to satisfy the bail conditions, counsel may make a bail application subsequent to the initial arraignment. Most judges will inquire as to what circumstances have changed since the prior application was made, and counsel must be ready to answer this question. In addition, counsel can seek further review of a local criminal court's bail determination in a superior court, under [CPL § 530.30](#). Counsel may also bring a habeas corpus petition in a superior court or in the Appellate Division, but this attempt often fails because counsel must demonstrate that the initial judge setting bail abused his discretion. Even when a reduction in bail is obtained in the superior court, the prosecutor may appeal the decision. Despite these vehicles for review, the original application still presents the best chance for release and counsel should thus attempt to obtain as much information as possible before the arraignment about the funds that can be used to post bail and the availability of a bail bond so that the initial court will set a bail amount that can realistically be met.

Notes to Decisions

Court authorization issued to sheriff's department, directing that defendant who posts cash bail not be released prior to court conducting sufficiency hearing, is not premature and clearly is consistent with bail provisions of CLS CPL Arts 500, 510 and 520, even though not expressly enumerated. [People v Pullara, 172 Misc. 2d 63, 656 N.Y.S.2d 832, 1997 N.Y. Misc. LEXIS 112 \(N.Y. County Ct. 1997\)](#).

The fee payable to a county treasurer by virtue of cash bail deposits should be deducted only upon exoneration of bail and return of the cash to the person who deposited it. 1972 Ops St Compt File # 661.

Cash bail received by a county treasurer pursuant to [Criminal Procedure Law § 520.15\(1\)\(a\)](#) and moneys paid into court received by a county treasurer pursuant to [CPLR § 2601](#) must be deposited in interest-bearing accounts; funds held for particular actions or proceedings may be pooled into a common bank account so long as separate book entry accounts are made for each action or proceeding. 1991 Op St Compt No. 91-33.

Inquiries of cash bail sureties must end if the defendant establishes that the surety is in legitimate possession of the bail money, and that the money is not the fruits of illegal activity. [*People v Shi Shen Yu*, 2015 NY Slip Op 25382, 50 Misc. 3d 786, 23 N.Y.S.3d 814, 2015 N.Y. Misc. LEXIS 4117 \(N.Y. Sup. Ct. 2015\)](#).

Opinion Notes

Agency Opinions

The sheriff is responsible for custody and transportation of prisoners and other detainees. This responsibility may not be transferred to a private firm. 1980 NY Ops Atty Gen Dec. 8 (informal).

Cash bail still unclaimed six years after bail is exonerated in a local criminal court becomes the property of the municipality. Opn No. 72-669 superseded to extent inconsistent with this opinion. 1980 Op St Compt File #515.

Research References & Practice Aids

Cross References:

Principal, defined, § 500.10(1).

Post bail, defined, § 500.10(8).

Cash bail, defined, § 500.10(10).

Federal Aspects:

Release of defendant from custody, [*USCS Federal Rules of Criminal Procedure, Rule 46*](#).

Jurisprudences:

8 Am Jur 2d, Bail and Recognizance §§ 73 et seq.

8 Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure, Forms 14–25, 42–47.

18 Am Jur Proof of Facts 2d 149, Excessive Bail.

Annotations:

Right to apply cash bail to payment of fine. [*92 ALR2d 1084*](#).

Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment. [*98 ALR2d 966*](#).

Funds deposited in court as subject of garnishment. [*1 A.L.R.3d 936*](#).

Insanity of accused as affecting right to bail in criminal case. [*11 ALR3d 1385*](#).

Texts:

[*New York Criminal Practice Ch. 13.*](#)

Hierarchy Notes:

[*NY CLS CPL*](#)

[*NY CLS CPL, Pt. THREE, Title P*](#)

[*NY CLS CPL, Pt. THREE, Title P, Art. 520*](#)

Forms

Forms

Form 1

Order for Cash Bail

[Caption]

An application for bail having been made to me by JOHN DOE, the defendant, who was heretofore indicted by the Grand Jury of the County of _____, charged with _____, and which said indictment has heretofore been duly remanded to the _____ Court of _____ County, it is

ORDERED, that said application be granted, and that the sum in which bail shall be taken is fixed at _____, with _____, sureties, or in lieu of said sureties said sum of money may be deposited in cash, or the equivalent value of the securities enumerated in (refer to statute) with the _____ of _____ County.

Form 2

Certificate of Taking Deposit of Cash Bail

[Caption]

I do hereby certify that I have, this _____ day of _____, 20_____, received the sum of _____, from JOHN DOE, the defendant herein, for and instead of bail herein.

Form 3

Affidavit on Application for Refund of Cash Bail at the Disposition of the Proceeding

[Caption]

[Venue]

John Doe, being duly sworn, deposes and says:

I am the surety for the above named defendant, and make this affidavit in support of an application for the refund of cash bail heretofore deposited by me herein.

On _____, 20_____, the defendant was arraigned on an indictment charging him with the crime of forgery, second degree, at which time he pleaded not guilty and was admitted to bail in the sum of \$_____. On that same day, as surety, I deposited the sum of \$_____ as cash bail for the said defendant, the certificate of deposit thereupon issued to me is annexed hereto and made part hereof.

On _____, 20_____, the defendant pleaded guilty to the crime of attempted forgery, third degree and on _____, 20_____, she received a suspended sentence and was placed on probation. Annexed hereto and made a part hereof is the certificate of the Clerk of this Court, certifying that such was the disposition of the case against the defendant. The action has thus been disposed of and there are no other charges pending against the defendant in connection with the cash bail as deposited.

WHEREFORE, I respectfully request that an order be made directing the County Treasurer of _____ County to refund to your deponent the cash bail in the sum of \$_____, previously deposited by me less deductions permitted by law, for which relief, no previous application has been made.

Jurat

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New York State Executive Budget Fiscal Year 2019

Article VII Legislation Part C – Bail Reform

PART C

**13 Section 1. Legislative findings. The legislature finds and declares
14 that there is a present need to revise New York's procedures regulating
15 release of persons charged with criminal offenses pending trial, set
16 forth in title P of the criminal procedure law, so that fewer presumed-
17 innocent people are held behind bars pretrial. The bill breaks the link
18 between paying money and earning freedom in cases involving misdemeanors
19 and non-violent felonies, so that defendants are either released on
20 their own recognizance or, failing that, released under non-monetary
21 conditions. The bill also revises the existing process of remanding
22 individuals in jail before trial, so that pretrial detention is used in
23 limited cases involving high risk of flight or a current risk to the
24 physical safety of a reasonably identifiable person or persons, and
25 comports with Supreme Court jurisprudence regarding required substantive
26 and procedural due process before detention.**

01/16/18 20 12670-01-8

**1 § 2. Subdivisions 1, 2, 4, 5, 6, 7, 8 and 9 of section 500.10 of the
2 criminal procedure law are amended and a new subdivision 3-a is added to
3 read as follows:**

**4 1. "Principal" means a defendant in a criminal action or proceeding,
5 or a person adjudged a material witness therein, or any other person so
6 involved therein that [he] the__principal may by law be compelled to
7 appear before a court for the purpose of having such court exercise
8 control over [his] the_principal's person to secure [his] the_princi-
9 pal's future attendance at the action or proceeding when required, and
10 who in fact either is before the court for such purpose or has been
11 before it and been subjected to such control.**

**12 2. "Release on own recognizance." A court releases a principal on
13 [his] the__principal's own recognizance when, having acquired control
14 over [his] the_principal's person, it permits [him] the_principal to be
15 at liberty during the pendency of the criminal action or proceeding**

16 involved upon condition that [he] the __principal will appear thereat
17 whenever [his] the __principal's attendance may be required and will at
18 all times render [himself] the __principal amenable to the orders and
19 processes of the court.

20 3-a. "Release under non-monetary conditions". A court releases a prin-
21 cipal under non-monetary conditions when, having acquired control over a
22 person, __it__ permits __the person to be at liberty during the pendency of
23 the criminal action under conditions set by the court, __which__ shall be
24 the __least__ restrictive __that__ will __reasonably__ assure __the principal's
25 appearance in court. Such conditions may include, among others, that the
26 principal shall be in contact with a pretrial services agency serving
27 principals in that county; that the principal shall abide by specified
28 restrictions on association or travel; that the principal shall refrain

01/16/18 21 12670-01-8

1 from possessing a firearm, destructive device or other dangerous weapon;
2 that __the__ person __be__ placed __in__ pretrial supervision with a pretrial
3 services agency serving principals in that county; that __the__ person __be__
4 monitored with an approved electronic monitoring device.

5 4. "Commit to the custody of the sheriff." A court commits a principal
6 to the custody of the sheriff when, having acquired control over his
7 person, it orders that he be confined in the custody of the sheriff
8 [during the pendency of the criminal action or proceeding involved]
9 pending payment of bail that is fixed, or pending the outcome of a hear-
10 ing as __to__ whether __the__ individual __shall__ be __ordered__ into __pretrial
11 detention.

12 5. "Securing order" means an order of a court [committing a principal
13 to the custody of the sheriff, or fixing bail, or releasing him on his
14 own recognizance] that either releases a principal under personal recog-
15 nizance, __releases the principal under non-monetary conditions, or fixes
16 bail, all with the direction that the __principal__ return __to__ court __for
17 future __court appearances and to be at all times amendable to the orders

18 and processes of the court.

19 6. ["Order of recognizance or bail" means a securing order releasing a
20 principal on his own recognizance or fixing bail] "Pretrial detention".

21 A court may commit a principal to pretrial detention if, after a hearing
22 and making such findings as specified in article five hundred forty-five
23 of this title, a judge so orders detention.

24 7. ["Application for recognizance or bail" means an application by a
25 principal that the court, instead of committing him to or retaining him
26 in the custody of the sheriff, either release him on his own recogni-
27 zance or fix bail.

01/16/18 22 12670-01-8

1 8.] "Post bail" means to deposit bail in the amount and form fixed by
2 the court, with the court or with some other authorized public servant
3 or agency.

4 [9.] 8. "Bail" means cash bail [or], a bail bond or money paid with a
5 credit card.

6 § 3. Section 510.10 of the criminal procedure law, as amended by chap-
7 ter 459 of the laws of 1984, is amended to read as follows:

8 § 510.10 Securing order; when required; alternatives available; standard
9 to be applied.

10 When a principal, whose future court attendance at a criminal action
11 or proceeding is or may be required, initially comes under the control
12 of a court, such court [must] shall, by a securing order[, either
13 release him on his own recognizance, fix bail or commit him to the
14 custody of the sheriff.]:

15 1. In cases where the most serious charge facing the defendant in the
16 case before the court or a pending case is a misdemeanor or a felony
17 other than that enumerated in section 70.02 of the penal law or a class
18 A felony offense defined in the penal law, release the principal pending
19 trial on the principal's personal recognizance, unless the court finds
20 on the record that release on recognizance will not reasonably assure

21 the individual's court attendance. In such instances, the court will
22 release the individual under non-monetary conditions, selecting the
23 least restrictive alternative that will reasonably assure the princi-
24 pal's court attendance. The court will support its choice of alterna-
25 tive on the record. A principal shall not be required to pay for any
26 part of the cost of release under non-monetary conditions, except that a
27 principal may be required to pay for all or a portion of the cost of
01/16/18 23 12670-01-8

1 electronic monitoring unless the principal is indigent and cannot pay
2 all or a portion of the cost of such monitoring;

3 2. In cases where the most serious charge facing the defendant in the
4 case before the court or a pending case is a felony enumerated in
5 section 70.02 of the penal law or a class A felony offense defined in
6 the penal law, release the principal pending trial on the principal's
7 personal recognizance, or release the principal under non-monetary
8 conditions, or fix bail, selecting the least restrictive alternative
9 that will reasonably assure the principal's court appearance when
10 required. The court will support its choice of alternative on the
11 record.

12 3. Notwithstanding the above, in cases where the prosecutor indicates
13 that it intends to move for pretrial detention as set out in article
14 five hundred forty-five of this title, the court shall commit the
15 defendant to the custody of the sheriff.

16 4. When a securing order is revoked or otherwise terminated in the
17 course of an uncompleted action or proceeding but the principal's future
18 court attendance still is or may be required and [he] the principal is
19 still under the control of a court, a new securing order must be issued.
20 When the court revokes or otherwise terminates a securing order which
21 committed the principal to the custody of the sheriff, the court shall
22 give written notification to the sheriff of such revocation or termi-
23 nation of the securing order.

24 § 4. Section 510.20 of the criminal procedure law is amended to read
25 as follows:

26 § 510.20 [Application for recognizance or bail; making and determination
27 thereof in general] Application_for_a__change__in__securing
28 order_based_on_a_material_change_of_circumstances.

01/16/18 24 12670-01-8

1 1. Upon any occasion when a court [is required to issue] has_issued a
2 securing order with respect to a principal, [or at any time when a prin-
3 cipal is confined in the custody of the sheriff as a result of a previ-
4 ously issued securing order, he] the_defendant_or_the_people may make an
5 application for [recognizance or bail] a_different_securing_order_due_to
6 a_material_change_of_circumstances:

7 (a)__in_cases_for_which_the_most_serious_charge_before_the_court_or_in
8 a_pending_case_is_a_misdemeanor_or_felony_other_than_that_enumerated__in
9 section__70.02__of__the_penal_law_or_a_class_A_felony_offense_defined_in
10 the_penal_law_for_a_different_non-monetary_securing_order;_or
11 (b)_in_cases_for_which_the_most_serious_charge_is_a_felony__enumerated
12 in_section_70.02_of_the_penal_law_or_a_class_A_felony_offense_defined_in
13 the_penal_law_for_a_different_securing_order.

14 2. Upon such application, the principal or__the_people must be
15 accorded an opportunity to be heard and to contend that [an order of
16 recognizance or bail] a_different_securing_order must or should issue[,
17 that the court should release him on his own recognizance rather than
18 fix bail, and that if bail is fixed it should be in a suggested amount
19 and form] because,_due__to__a__material__change__in__circumstances,__the
20 current__order__is__either__too_restrictive_or_not_restrictive_enough_to
21 reasonably_ensure_a_defendant's_appearance_in_court.

22 § 5. The criminal procedure law is amended by adding a new section
23 510.25 to read as follows:

24 § 510.25 Rehearing__on__bail__after__five__days_in_custody_after_bail_is
25 fixed.

26 In addition to any other available motion or procedure available under
27 this part, a principal for whom bail was fixed and who is still in
28 custody five days after bail was fixed shall be brought before the court
01/16/18 25 12670-01-8

1 the next business day for a rehearing on the securing order. The court
2 shall examine the principal's financial circumstances and order a new
3 securing order. If the court chooses to fix bail, it shall do so at an
4 amount that will both reasonably assure the defendant's appearance in
5 court and that the defendant is reasonably able to pay.

6 § 6. Section 510.30 of the criminal procedure law, subparagraph (v) of
7 paragraph (a) of subdivision 2 as amended by chapter 920 of the laws of
8 1982, subparagraph (vi) of paragraph (a) of subdivision 2 as renumbered
9 by chapter 447 of the laws of 1977, subparagraph (vii) of paragraph (a)
10 of subdivision 2 as added and subparagraphs (viii) and (ix) of paragraph
11 (a) of subdivision 2 as renumbered by section 1 of part D of chapter 491
12 of the laws of 2012, and subdivision 3 as added by chapter 788 of the
13 laws of 1981, is amended to read as follows:

14 § 510.30 Application for [recognizance or bail] securing order; rules of
15 law and criteria controlling determination.

16 [1. Determinations of applications for recognizance or bail are not in
17 all cases discretionary but are subject to rules, prescribed in article
18 five hundred thirty and other provisions of law relating to specific
19 kinds of criminal actions and proceedings, providing (a) that in some
20 circumstances such an application must as a matter of law be granted,
21 (b) that in others it must as a matter of law be denied and the princi-
22 pal committed to or retained in the custody of the sheriff, and (c) that
23 in others the granting or denial thereof is a matter of judicial
24 discretion.

25 2. To the extent that the issuance of an order of recognizance or bail
26 and the terms thereof are matters of discretion rather than of law, an
27 application is determined on the basis of the following factors and

28 criteria:

01/16/18 26 12670-01-8

1 (a)] With respect to any principal, the court must [consider the]
2 impose__the__least_restrictive kind and degree of control or restriction
3 that is necessary to secure [his] the_principal's court attendance when
4 required. In determining that matter, the court must, on the basis of
5 available information, consider and take into account:
6 [(i) The principal's character, reputation, habits and mental condi-
7 tion;
8 (ii) His employment and financial resources; and
9 (iii) His family ties and the length of his residence if any in the
10 community; and
11 (iv) His] 1._information_about_the_principal_that_is_relevant_to_court
12 appearance,__including,__but_not_limited_to,__the_principal's_activities,
13 history_and_community_ties;
14 2._if_the_principal_is_a_defendant,__the_charges_facing_the_principal;
15 3._the_principal's criminal record if any; [and
16 (v)] 4. His record of previous adjudication as a juvenile delinquent,
17 as retained pursuant to section 354.2 of the family court act, or, of
18 pending cases where fingerprints are retained pursuant to section 306.1
19 of such act, or a youthful offender, if any; [and
20 (vi) His] 5._the_principal's previous record if any in responding to
21 court appearances when required or with respect to flight to avoid crim-
22 inal prosecution; [and
23 (vii)] 6._if_monetary_bail_is_permitted,__according_to_the_restrictions
24 set_forth_in_section_510.10_of_this__title,__the__principal's__financial
25 circumstances;
26 7. Where the principal is charged with a crime or crimes against a
27 member or members of the same family or household as that term is
01/16/18 27 12670-01-8

1 defined in subdivision one of section 530.11 of this title, the follow-

2 ing factors:

3 [(A)] (i) any violation by the principal of an order of protection
4 issued by any court for the protection of a member or members of the
5 same family or household as that term is defined in subdivision one of
6 section 530.11 of this title, whether or not such order of protection is
7 currently in effect; and

8 [(B)] (ii) the principal's history of use or possession of a firearm;

9 [and

10 (viii)] 8. If [he] the_principal is a defendant, the weight of the
11 evidence against [him] the_principal in the pending criminal action and
12 any other factor indicating probability or improbability of conviction;
13 or, in the case of an application for [bail or recognizance] securing
14 order pending appeal, the merit or lack of merit of the appeal; and
15 [(ix)] 9. If [he] the_principal is a defendant, the sentence which may
16 be or has been imposed upon conviction[.

17 (b) Where the principal is a defendant-appellant in a pending appeal
18 from a judgment of conviction, the court must also consider the likeli-
19 hood of ultimate reversal of the judgment. A determination that the
20 appeal is palpably without merit alone justifies, but does not require,
21 a denial of the application, regardless of any determination made with
22 respect to the factors specified in paragraph (a).

23 3. When bail or recognizance is ordered, the court shall inform the
24 principal, if he is a defendant charged with the commission of a felony,
25 that the release is conditional and that the court may revoke the order
26 of release and commit the principal to the custody of the sheriff in
27 accordance with the provisions of subdivision two of section 530.60 of
01/16/18 28 12670-01-8

1 this chapter if he commits a subsequent felony while at liberty upon
2 such order.];_and

3 10._if_the_principal_is_a_defendant-appellant_in_a_pending_appeal_from
4 a_judgment_of_conviction,_the_court_must_also_consider_the_likelihood_of

5 ultimate reversal of the judgment. A determination that the appeal is
6 palpably without merit alone justifies, but does not require, a denial
7 of the application, regardless of any determination made with respect to
8 the factors specified in this paragraph.

9 § 7. Section 510.40 of the criminal procedure law is amended to read
10 as follows:

11 § 510.40 [Application for recognizance or bail; determination thereof,
12 form of securing order and execution thereof] Notification
13 to principal by court of conditions of release and penal-
14 ties for violations of release.

15 1. [An application for recognizance or bail must be determined by a
16 securing order which either:

17 (a) Grants the application and releases the principal on his own
18 recognizance; or

19 (b) Grants the application and fixes bail; or

20 (c) Denies the application and commits the principal to, or retains
21 him in, the custody of the sheriff.

22 2.] Upon ordering that a principal be released on [his] the princi-
23 pal's own recognizance, or released under non-monetary conditions, or,
24 if bail has been fixed, upon the posting of bail and successful examina-
25 tion that the bail complies with the order the court must direct [him]
26 the principal to appear in the criminal action or proceeding involved
27 whenever [his] the principal's attendance may be required and to [render
28 himself] be at all times amenable to the orders and processes of the

01/16/18 29 12670-01-8

1 court. If the principal is a defendant, the court shall also direct the
2 defendant not to commit a crime while at liberty upon the court's secur-
3 ing order. If such principal is in the custody of the sheriff or at
4 liberty upon bail at the time of the order, the court must direct that
5 [he] the principal be discharged from such custody [or, as the case may
6 be, that his bail be exonerated].

7 [3. Upon the issuance of an order fixing bail, and upon the posting
8 thereof, the court must examine the bail to determine whether it
9 complies with the order. If it does, the court must, in the absence of
10 some factor or circumstance which in law requires or authorizes disap-
11 proval thereof, approve the bail and must issue a certificate of
12 release, authorizing the principal to be at liberty, and, if he is in
13 the custody of the sheriff at the time, directing the sheriff to
14 discharge him therefrom. If the bail fixed is not posted, or is not
15 approved after being posted, the court must order that the principal be
16 committed to the custody of the sheriff.]

17 2. If the principal is released under non-monetary conditions, the
18 court shall, in the document authorizing the principal's release, notify
19 the principal of:

20 (a) any of the conditions under which the principal is subject, in
21 addition to the directions in subdivision one of this section, in a
22 manner sufficiently clear and specific to serve as a guide for the prin-
23 cipal's conduct; and

24 (b) the consequences for violation of those conditions, which could
25 include revoking of the securing order, setting of a more restrictive
26 securing order, or, after the hearing prescribed in article five hundred
27 forty-five of this title, pretrial detention.

01/16/18 30 12670-01-8

1 § 8. The criminal procedure law is amended by adding a new section
2 510.45 to read as follows:

3 § 510.45 Pretrial service agencies.

4 The office of court administration shall certify a pretrial services
5 agency or agencies in each county to monitor principals released under
6 conditions of non-monetary release.

7 § 9. Section 510.50 of the criminal procedure law is amended to read
8 as follows:

9 § 510.50 Enforcement of securing order.

10 When the attendance of a principal confined in the custody of the
11 sheriff is required at the criminal action or proceeding at a particular
12 time and place, the court may compel such attendance by directing the
13 sheriff to produce him or her at such time and place. If the principal
14 is at liberty on [his] the_principal's own recognizance or_non-monetary
15 conditions or on bail, [his] the_principal's attendance may be achieved
16 or compelled by various methods, including notification and the issuance
17 of a bench warrant, prescribed by law in provisions governing such
18 matters with respect to the particular kind of action or proceeding
19 involved.

20 § 10. Paragraph (b) of subdivision 2 of section 520.10 of the criminal
21 procedure law, as amended by chapter 784 of the laws of 1972, is amended
22 to read as follows:

23 (b) The court [may] shall direct that the bail be posted in any one of
24 [two] three or more of the forms specified in subdivision one, design-
25 nated in the alternative, and may designate different amounts varying
26 with the forms[;],_except_that_one_of_the_forms_shall_be_either_an_unse-
27 cured_or_partially_secured_surety_bond,_as_selected_by_the_court.

01/16/18 31 12670-01-8

1 § 11. The article heading of article 530 of the criminal procedure law
2 is amended to read as follows:

3 [ORDERS OF RECOGNIZANCE OR BAIL WITH
4 RESPECT TO DEFENDANTS IN CRIMINAL ACTIONS
5 AND PROCEEDINGS--WHEN AND BY WHAT
6 COURTS AUTHORIZED] SECURING_ORDERS_WITH
7 RESPECT_TO_DEFENDANTS_IN_CRIMINAL_ACTIONS_AND
8 PROCEEDINGS_-_WHEN_AND_BY_WHAT_COURTS_AUTHORIZED

9 § 12. Section 530.10 of the criminal procedure law is amended to read
10 as follows:

11 § 530.10 Order of recognizance or bail; in general.

12 Under circumstances prescribed in this article, a court, upon applica-

tion of a defendant charged with or convicted of an offense, is
[required or authorized to order bail or recognizance] to issue a secur-
ing order for the release or prospective release of such defendant
during the pendency of either:

1. A criminal action based upon such charge; or
2. An appeal taken by the defendant from a judgment of conviction or
a sentence or from an order of an intermediate appellate court affirming
or modifying a judgment of conviction or a sentence.

§ 13. Subdivision 4 of section 530.11 of the criminal procedure law,
as added by chapter 186 of the laws of 1997, is amended to read as
follows:

4. When a person is arrested for an alleged family offense or an
alleged violation of an order of protection or temporary order of
protection or arrested pursuant to a warrant issued by the supreme or
family court, and the supreme or family court, as applicable, is not in
session, such person shall be brought before a local criminal court in
01/16/18 32 12670-01-8

the county of arrest or in the county in which such warrant is return-
able pursuant to article one hundred twenty of this chapter. Such local
criminal court may issue any order authorized under subdivision eleven
of section 530.12 of this article, section one hundred fifty-four-d or
one hundred fifty-five of the family court act or subdivision three-b of
section two hundred forty or subdivision two-a of section two hundred
fifty-two of the domestic relations law, in addition to discharging
other arraignment responsibilities as set forth in this chapter. In
making such order, the local criminal court shall consider the [bail
recommendation] securing order, if any, made by the supreme or family
court as indicated on the warrant or certificate of warrant. Unless the
petitioner or complainant requests otherwise, the court, in addition to
scheduling further criminal proceedings, if any, regarding such alleged
family offense or violation allegation, shall make such matter return-

15 able in the supreme or family court, as applicable, on the next day such
16 court is in session.

17 § 14. Paragraph (a) of subdivision 8 of section 530.13 of the criminal
18 procedure law, as added by chapter 388 of the laws of 1984, is amended
19 to read as follows:

20 (a) revoke [an order of recognizance or bail] a __securing__ order and
21 commit the defendant to custody; or

22 § 15. The opening paragraph of subdivision 1 of section 530.13 of the
23 criminal procedure law, as amended by chapter 137 of the laws of 2007,
24 is amended to read as follows:

25 When any criminal action is pending, and the court has not issued a
26 temporary order of protection pursuant to section 530.12 of this arti-
27 cle, the court, in addition to the other powers conferred upon it by
28 this chapter, may for good cause shown issue a temporary order of
01/16/18 33 12670-01-8

1 protection in conjunction with any securing order [committing the
2 defendant to the custody of the sheriff or as a condition of a pre-trial
3 release, or as a condition of release on bail or an adjournment in
4 contemplation of dismissal]. In addition to any other conditions, such
5 an order may require that the defendant:

6 § 16. Subdivisions 9 and 11 of section 530.12 of the criminal proce-
7 dure law, subdivision 9 as amended by section 81 of subpart B of part C
8 of chapter 62 of the laws of 2011, subdivision 11 as amended by chapter
9 498 of the laws of 1993, the opening paragraph of subdivision 11 as
10 amended by chapter 597 of the laws of 1998, paragraph (a) of subdivision
11 11 as amended by chapter 222 of the laws of 1994, paragraph (d) of
12 subdivision 11 as amended by chapter 644 of the laws of 1996, are
13 amended to read as follows:

14 9. If no warrant, order or temporary order of protection has been
15 issued by the court, and an act alleged to be a family offense as
16 defined in section 530.11 of this [chapter] article is the basis of the

17 arrest, the magistrate shall permit the complainant to file a petition,
18 information or accusatory instrument and for reasonable cause shown,
19 shall thereupon hold such respondent or defendant, [admit to, fix or
20 accept bail,] establish_a_securing_order or parole him or her for hear-
21 ing before the family court or appropriate criminal court as the
22 complainant shall choose in accordance with the provisions of section
23 530.11 of this [chapter] article.

24 11. If a defendant is brought before the court for failure to obey any
25 lawful order issued under this section, or an order of protection issued
26 by a court of competent jurisdiction in another state, territorial or
27 tribal jurisdiction, and if, after hearing, the court is satisfied by
01/16/18 34 12670-01-8

1 competent proof that the defendant has willfully failed to obey any such
2 order, the court may:

3 (a) revoke [an order of recognizance or revoke an order of bail or
4 order forfeiture of such bail] a_securing_order and commit the defendant
5 to custody; or

6 (b) restore the case to the calendar when there has been an adjourn-
7 ment in contemplation of dismissal and commit the defendant to custody;
8 or

9 (c) revoke a conditional discharge in accordance with section 410.70
10 of this chapter and impose probation supervision or impose a sentence of
11 imprisonment in accordance with the penal law based on the original
12 conviction; or

13 (d) revoke probation in accordance with section 410.70 of this chapter
14 and impose a sentence of imprisonment in accordance with the penal law
15 based on the original conviction. In addition, if the act which consti-
16 tutes the violation of the order of protection or temporary order of
17 protection is a crime or a violation the defendant may be charged with
18 and tried for that crime or violation.

19 § 17. Section 530.20 of the criminal procedure law, as amended by

20 chapter 531 of the laws of 1975, subparagraph (ii) of paragraph (b) of
21 subdivision 2 as amended by chapter 218 of the laws of 1979, is amended
22 to read as follows:

23 § 530.20 [Order of recognizance or bail;] Securing_order by local crimi-
24 nal court when action is pending therein.

25 When a criminal action is pending in a local criminal court, such
26 court, upon application of a defendant, must [or may order recognizance
27 or bail] issue_a_securing_order as follows:

01/16/18 35 12670-01-8

1 1. [When the defendant is charged, by information, simplified informa-
2 tion, prosecutor's information or misdemeanor complaint, with an offense
3 or offenses of less than felony grade only, the court must order recog-
4 nizance or bail.] In_cases_where_the_most_serious_charge_facing_the
5 defendant_in_the_case_before_the_court_or_a_pending_case_is_a_misdemea-
6 nor_or_a_felony_other_than_that_enumerated_in_section_70.02_of_the_penal
7 law_or_a_class_A_felony_offense_defined_in_the_penal_law,_release_the
8 principal_pending_trial_on_the_principal's_personal_recognizance,_unless
9 the_court_finds_on_the_record_that_release_on_recognizance_will_not
10 reasonably_assure_the_individual's_court_attendance._In_such_instances,
11 the_court_will_release_the_individual_under_non-monetary_conditions,
12 selecting_the_least_restrictive_alternative_that_will_reasonably_assure
13 the_principal's_court_attendance._The_court_will_support_its_choice_of
14 alternative_on_the_record._The_principal_shall_not_be_required_to_pay
15 for_any_part_of_the_cost_of_release_under_non-monetary_conditions,
16 except_that_a_principal_may_be_required_to_pay_for_all_or_a_portion_of
17 the_cost_of_electronic_monitoring_unless_the_principal_is_indigent_and
18 cannot_pay_all_or_a_portion_of_the_cost_of_such_monitoring.

19 2. [When the defendant is charged, by felony complaint, with a felony,
20 the court may, in its discretion, order recognizance or bail except as
21 otherwise provided in this subdivision:

22 (a) A city court, a town court or a village court may not order

23 recognizance or bail when (i) the defendant is charged with a class A
24 felony, or (ii) it appears that the defendant has two previous felony
25 convictions;

26 (b)] In cases where the most serious charge facing the defendant in
27 the case before the court or a pending case is a felony enumerated in
28 section 70.02 of the penal law or a class A felony offense defined in
01/16/18 36 12670-01-8

1 the penal law, release the principal pending trial on the principal's
2 personal recognizance, or release the principal under non-monetary
3 conditions, or fix bail, selecting the least restrictive alternative
4 that will reasonably assure the principal's court appearance when
5 required. The court will support its choice of alternative on the
6 record.

7 3. Notwithstanding the above, in cases where the people indicate that
8 they intend to move for pretrial detention as set forth in article five
9 hundred forty-five of this title, the court shall commit the defendant
10 to the custody of the sheriff.

11 4. Notwithstanding the above, in cases where the defendant is facing a
12 charge of a class A felony, or it appears that the defendant has two
13 previous felony convictions within the meaning of subdivision one of
14 section 70.08 or 70.10 of the penal law; the court shall commit the
15 defendant to the custody of the sheriff for the county or superior court
16 to make a determination about a securing order within three days.

17 5. No local criminal court may order [recognizance or bail] a securing
18 order with respect to a defendant charged with a felony unless and
19 until:

20 (i) The district attorney has been heard in the matter or, after
21 knowledge or notice of the application and reasonable opportunity to be
22 heard, has failed to appear at the proceeding or has otherwise waived
23 his right to do so; and

24 (ii) The court [has], and counsel for the defense, have been

25 furnished with a report of the division of criminal justice services
26 concerning the defendant's criminal record, if any, or with a police
27 department report with respect to the defendant's prior arrest and
28 conviction record, if any. If neither report is available, the court,
01/16/18 37 12670-01-8

1 with the consent of the district attorney, may dispense with this
2 requirement; provided, however, that in an emergency, including but not
3 limited to a substantial impairment in the ability of such division or
4 police department to timely furnish such report, such consent shall not
5 be required if, for reasons stated on the record, the court deems it
6 unnecessary. [When the court has been furnished with any such report or
7 record, it shall furnish a copy thereof to counsel for the defendant or,
8 if the defendant is not represented by counsel, to the defendant.]

9 § 18. The section heading, subdivision 1 and subdivision 2 of section
10 530.30 of the criminal procedure law, subdivision 2 as amended by chap-
11 ter 762 of the laws of 1971, are amended to read as follows:

12 [Order of recognizance or bail; by superior court judge when action is
13 pending in local criminal court] Securing_order_by_superior
14 court_judge_when_action_is_pending_in_local_criminal_court.

15 1. When a criminal action is pending in a local criminal court, other
16 than one consisting of a superior court judge sitting as such, a judge
17 of a superior court holding a term thereof in the county, upon applica-
18 tion of a defendant, may order [recognizance or bail] a_securing_order
19 when such local criminal court:

20 (a) Lacks authority to issue such an order, pursuant to [paragraph
21 (a) of] subdivision [two] four of section 530.20; or

22 (b) Has denied an application for recognizance or bail; or

23 (c) Has fixed bail which is excessive; or

24 (d) Has_set_a_securing_order_of_release_under_non-monetary_conditions
25 which_are_more_restrictive_than_necessary_to_reasonably_ensure_court
26 attendance.

27 In such case, such superior court judge may vacate the order of such
28 local criminal court and release the defendant on [his own] recognizance
01/16/18 38 12670-01-8

1 or_under_release_with_conditions, or fix bail in a lesser amount or in a
2 less burdensome form, whichever is the least restrictive alternative
3 that will reasonably assure defendant's appearance in court. The court
4 will support its choice of alternative on the record.

5 2. Notwithstanding the provisions of subdivision one, when the
6 defendant is charged with a felony in a local criminal court, a superior
7 court judge may not order recognizance or bail unless and until the
8 district attorney has had an opportunity to be heard in the matter and
9 such judge has been furnished with a report as described in [subpara-
10 graph (ii) of paragraph (b) of] subdivision [two] five of section
11 530.20.

12 § 19. Section 530.40 of the criminal procedure law, subdivision 3 as
13 amended by chapter 264 of the laws of 2003, and subdivision 4 as amended
14 by chapter 762 of the laws of 1971, is amended to read as follows:
15 § 530.40 [Order of recognizance or bail;] Securing_order by superior
16 court when action is pending therein.

17 When a criminal action is pending in a superior court, such court,
18 upon application of a defendant, must or may order recognizance or bail
19 as follows:

20 1. [When the defendant is charged with an offense or offenses of less
21 than felony grade only, the court must order recognizance or bail.

22 2. When the defendant is charged with a felony, the court may, in its
23 discretion, order recognizance or bail. In any such case in which an
24 indictment (a) has resulted from an order of a local criminal court
25 holding the defendant for the action of the grand jury, or (b) was filed
26 at a time when a felony complaint charging the same conduct was pending
27 in a local criminal court, and in which such local criminal court or a
28 superior court judge has issued an order of recognizance or bail which

01/16/18 39 12670-01-8

1 is still effective, the superior court's order may be in the form of a
2 direction continuing the effectiveness of the previous order.] In cases
3 where the most serious charge facing the defendant in the case before
4 the court or a pending case is a misdemeanor or a felony other than that
5 enumerated in section 70.02 of the penal law or a class A felony offense
6 defined in the penal law, release the principal pending trial on the
7 principal's personal recognizance, unless the court finds on the record
8 that release on recognizance will not reasonably assure the individual's
9 court attendance. In such instances, the court will release the individ-
10 ual under non-monetary conditions, selecting the least restrictive
11 alternative that will reasonably assure the principal's court attend-
12 ance. The court will support its choice of alternative on the record.
13 The principal shall not be required to pay for any part of the cost of
14 release under non-monetary conditions, except that a principal may be
15 required to pay for all or a portion of the cost of electronic monitor-
16 ing unless the principal is indigent and cannot pay all or a portion of
17 the cost of such monitoring.

18 2. In cases where the most serious charge facing the defendant in the
19 case before the court or a pending case is a felony enumerated in
20 section 70.02 of the penal law or a class A felony offense defined in
21 the penal law, release the principal pending trial on the principal's
22 personal recognizance, or release the principal under non-monetary
23 conditions, or fix bail, selecting the least restrictive alternative
24 that will reasonably assure the principal's court appearance when
25 required. The court will support its choice of alternative on the
26 record.

27 3. Notwithstanding the above, in cases where the people indicate that
28 they intend to move for pretrial detention as set out in article five

01/16/18 40 12670-01-8

1 hundred forty-five of this title, the court shall commit the defendant

2 to the custody of the sheriff.

3 4. Notwithstanding the provisions of [subdivision] subdivisions one
4 and two, a superior court may not [order recognizance or bail] issue a
5 securing order, or permit a defendant to remain at liberty pursuant to
6 an existing order, after [he] the defendant has been convicted of
7 either: (a) a class A felony or (b) any class B or class C felony
8 defined in article one hundred thirty of the penal law committed or
9 attempted to be committed by a person eighteen years of age or older
10 against a person less than eighteen years of age. In either case the
11 court must commit or remand the defendant to the custody of the sheriff.

12 [4.] 5. Notwithstanding the provisions of [subdivision] subdivisions
13 one and two, a superior court may not [order recognizance or bail] issue
14 a securing order when the defendant is charged with a felony unless and
15 until the district attorney has had an opportunity to be heard in the
16 matter and such court [has] and counsel for the defense have been
17 furnished with a report as described in subparagraph (ii) of paragraph
18 (b) of subdivision two of section 530.20 of this article.

19 § 20. Subdivision 1 of section 530.45 of the criminal procedure law,
20 as amended by chapter 264 of the laws of 2003, is amended to read as
21 follows:

22 1. When the defendant is at liberty in the course of a criminal action
23 as a result of a prior [order of recognizance or bail] securing order
24 and the court revokes such order and then [either fixes no bail or fixes
25 bail in a greater amount or in a more burdensome form than was previous-
26 ly fixed and remands or commits defendant to the custody of the sheriff,
27 a judge designated in subdivision two, upon application of the defendant
28 following conviction of an offense other than a class A felony or a

01/16/18 41 12670-01-8

1 class B or class C felony offense defined in article one hundred thirty
2 of the penal law committed or attempted to be committed by a person
3 eighteen years of age or older against a person less than eighteen years

4 of age, and before sentencing, may issue a securing order and either
5 release defendant on his own recognizance, or fix bail, or fix bail in a
6 lesser amount or] issues_a_more_restrictive_securing_order in a less
7 [burdensome] restrictive form than fixed by the court in which the
8 conviction was entered.

9 § 21. Section 530.60 of the criminal procedure law, subdivision 1 as
10 amended by chapter 565 of the laws of 2011, subdivision 2 as added by
11 chapter 788 of the laws of 1981 and paragraph (a) of subdivision 2 as
12 amended by chapter 794 of the laws of 1986, is amended to read as
13 follows:

14 § 530.60 [Order of recognizance or bail; revocation thereof] Securing
15 order;_modification_thereof_upon_court's_own_action.

16 [1.] Whenever in the course of a criminal action or proceeding a
17 defendant is at liberty as a result of [an order of recognizance or
18 bail] a__securing__order issued pursuant to this chapter, and the court
19 considers it necessary to review such order, it may, and by a bench
20 warrant if necessary, require the defendant to appear before the court.
21 Upon such appearance, the court, for good cause shown, may revoke [the
22 order of recognizance or bail. If the defendant is entitled to recogni-
23 zance or bail as a matter of right, the court must issue another such
24 order. If he or she is not, the court may either issue such an order or
25 commit the defendant to the custody of the sheriff. Where the defendant
26 is committed to the custody of the sheriff and is held on a felony
27 complaint, a new period as provided in section 180.80 of this chapter
28 shall commence to run from the time of the defendant's commitment under
01/16/18 42 12670-01-8

1 this subdivision] and_modify_the_securing_order,__selecting__the__least
2 restrictive_alternative_that_will_reasonably_assure_court_appearance._If
3 the__most_serious_charge_facing_the_defendant_in_the_case_before_the
4 court__or__a_pending_case_is__a_misdemeanor_or_felony_other_than_that
5 enumerated_in_section_70.02_of_the_penal_law_or_a_class_A_felony_defined

6 in the penal law, the court must release the defendant on personal
7 recognizance or set release with non-monetary conditions. Notwithstand-
8 ing the foregoing, the people may move at any time for consideration of
9 pretrial detention under article five hundred forty-five of this title
10 if the defendant's alleged actions render the defendant eligible under
11 for a hearing under that section.

12 [2. (a) Whenever in the course of a criminal action or proceeding a
13 defendant charged with the commission of a felony is at liberty as a
14 result of an order of recognizance or bail issued pursuant to this arti-
15 cle it shall be grounds for revoking such order that the court finds
16 reasonable cause to believe the defendant committed one or more speci-
17 fied class A or violent felony offenses or intimidated a victim or
18 witness in violation of sections 215.15, 215.16 or 215.17 of the penal
19 law while at liberty. Before revoking an order of recognizance or bail
20 pursuant to this subdivision, the court must hold a hearing and shall
21 receive any relevant, admissible evidence not legally privileged. The
22 defendant may cross-examine witnesses and may present relevant, admissi-
23 ble evidence on his own behalf. Such hearing may be consolidated with,
24 and conducted at the same time as, a felony hearing conducted pursuant
25 to article one hundred eighty of this chapter. A transcript of testimony
26 taken before the grand jury upon presentation of the subsequent offense
27 shall be admissible as evidence during the hearing. The district attor-
01/16/18 43 12670-01-8

1 may move to introduce grand jury testimony of a witness in lieu of
2 that witness' appearance at the hearing.

3 (b) Revocation of an order of recognizance or bail and commitment
4 pursuant to this subdivision shall be for the following periods, either:

5 (i) For a period not to exceed ninety days exclusive of any periods of
6 adjournment requested by the defendant; or

7 (ii) Until the charges contained within the accusatory instrument have
8 been reduced or dismissed such that no count remains which charges the

9 defendant with commission of a felony; or

10 (iii) Until reduction or dismissal of the charges contained within the
11 accusatory instrument charging the subsequent offense such that no count
12 remains which charges the defendant with commission of a class A or
13 violent felony offense.

14 Upon expiration of any of the three periods specified within this
15 paragraph, whichever is shortest, the court may grant or deny release
16 upon an order of bail or recognizance in accordance with the provisions
17 of this article. Upon conviction to an offense the provisions of article
18 five hundred thirty of this chapter shall apply.

19 (c) Notwithstanding the provisions of paragraph (a) of this subdivi-
20 sion a defendant, against whom a felony complaint has been filed which
21 charges the defendant with commission of a class A or violent felony
22 offense committed while he was at liberty as specified therein, may be
23 committed to the custody of the sheriff pending a revocation hearing for
24 a period not to exceed seventy-two hours. An additional period not to
25 exceed seventy-two hours may be granted by the court upon application of
26 the district attorney upon a showing of good cause or where the failure
27 to commence the hearing was due to the defendant's request or occurred
28 with his consent. Such good cause must consist of some compelling fact

01/16/18 44 12670-01-8

1 or circumstance which precluded conducting the hearing within the
2 initial prescribed period.]

3 § 22. The criminal procedure law is amended by adding a new section
4 530.65 to read as follows:

5 § 530.65 Violation of a condition of release, remedies available.

6 When a principal is released under non-monetary conditions, the court,
7 upon motion by the people, may revoke and modify the securing order due
8 to violations of those release conditions. In determining whether to
9 revoke and modify the securing order, the court must consider the
10 nature, the willfulness, and the seriousness of the violation and may

11 only_set_a_more_restrictive_condition_or_conditions_or_release_if_it
12 finds_that_such_conditions_are_necessary_to_reasonably_assure_the
13 defendant's_appearance_in_court.____Notwithstanding_the_foregoing,_the
14 people_may_move_at_any_time_for_consideration_of_pretrial_detention
15 under_article_five_hundred_forty-five_of_this_title_if_the_defendant's
16 alleged_actions_render_the_defendant_eligible_under_for_a_hearing_under
17 that_section.

18 § 23. Title P of part 3 of the criminal procedure law is amended by
19 adding a new article 545 to read as follows:

20 ARTICLE_545--PRETRIAL_DETENTION

21 Section_545.10_Pretial_detention;_when_ordered.

22 545.20_Eligibility_for_a_pretrial_detention_hearing.

23 545.30_Pretial_detention_hearing.

24 545.40_Order_for_pretrial_detention.

25 545.50_Reopening_of_pretrial_hearing.

26 545.60_Length_of_detention_for_defendant_held_under_a_pretrial
27 detention_order.

28 §_545.10_Pretial_detention;_when_ordered.

01/16/18 45 12670-01-8

1 A_county_or_superior_court_may_order,_before_trial,_the_detention_of_a
2 defendant_if_the_people_seek_detention_of_the_defendant_under_section
3 545.20_of_this_article,_and,_after_a_hearing_pursuant_to_section_545.30
4 of_this_article,_the_court_finds_clear_and_convincing_evidence_that_the
5 defendant_poses_a_high_risk_of_flight_before_trial,_or_that_defendant
6 poses_a_current_threat_to_the_physical_safety_of_a_reasonably_identifi-
7 able_person_or_persons,_and_that_no_conditions_or_combination_of_condi-
8 tions_in_the_community_will_suffice_to_contain_the_aforesaid_risk_or
9 threat.

10 §_545.20_Eligibility_for_a_pretrial_detention_hearing.

11 1. The_people_may_make_a_motion_with_the_court_at_any_time_seeking_the
12 pretrial_detention_of_a_defendant:

13 (a) __charged__with__offenses__involving__domestic__violence,__or__crimes
14 involving_serious_violence_or_a_class_A_felony_defined_in_the_penal_law;
15 (b) __charged__with__offenses__involving__witness__intimidation__under__section
16 215.15, 215.16_or_215.17_of_the_penal_law;
17 (c) __charged__with__committing__a__new__crime__while__in__the__community__on
18 recognizance,__or__non-monetary-conditions,__or__bail;_or
19 (d) __who__willfully__failed__to__appear__in__court.

20 2. Upon_such_motion_by_the_people,_the_defendant_shall_be_committed_to
21 the_custody_of_the_sheriff. If_the_person_is_at_liberty,_a_warrant_shall
22 issue_and_the_defendant_brought_into_custody_of_the_sheriff.

23 §_545.30_Pretrial_detention_hearing.

24 1. __A_hearing_shall_be_held_within_five_working_days_from_the_people's
25 motion.__At_the_hearing,_the_defendant__shall__have__the__right__to__be
26 represented_by_counsel,_and,_if_financially_unable_to_obtain_counsel,_to
27 have_counsel_assigned. The_defendant_shall_be_afforded_an_opportunity_to
28 testify,__to_present_witnesses,__to_cross-examine_witnesses_who_appear_at
01/16/18 46 12670-01-8

1 the_hearing,_and_to_present_information_by__proffer__or__otherwise.__The
2 rules_concerning_the_admissibility_of_evidence_in_criminal_trials_do_not
3 apply__to__the__presentation_and_consideration_of_information_during_the
4 hearing.

5 2. __Discovery__shall_be_afforded_in_accordance_with_pretrial_hearings,
6 as_set_out_in_criminal_procedure_law_section_240.44.

7 3. In_hearings_in_cases_for_which_there_is_no_indictment,__the__people
8 shall_establish_probable_cause_that_the_eligible_defendant_committed_the
9 charged__offense.__The__people__must__establish__by_clear_and_convincing
10 evidence_that_defendant_poses_a_high_risk_of_flight_or_a_current__threat
11 of__physical__danger__to_a_reasonably_identifiable_person_or_persons_and
12 that_no_conditions_or_combination_of_conditions_in__the__community__will
13 suffice__to__contain__the__aforesaid_risk__or__threat. There_shall_be_a
14 rebuttable_presumption,_which_the_defendant_may_overcome_by_a_preponder-

15 ance_of_the_evidence, that_no_conditions_or_combination_of_conditions_in
16 the_community_will_suffice_to_contain_a_current_threat_to_the_physical
17 safety_of_a_reasonably_identifiable_person_or_persons_if_the_court_finds
18 probable_cause_that_the_defendant:

19 (a) committed_a_crime_for_which_the_defendant_would_be_subject_to_a
20 term_of_life_imprisonment;

21 (b) committed_a_crime_involving_domestic_violence_or_a_crime_involving
22 serious_violence_or_a_class_A_felony_offense_defined_in_the_penal_law
23 while_the_defendant_was_in_the_community_on_recognizance,or_non-mone-
24 tary_conditions,or_bail_while_charged_with_a_crime_enumerated_in
25 section_70.02_of_the_penal_law_or_a_class_A_felony_offense;

26 (c) threatened,injured,intimidated,or_attempted_to_threaten,injure
27 or_intimidate_a_prospective_witness_or_juror_in_an_criminal_investi-
28 gation_or_judicial_proceeding;_or

01/16/18 47 12670-01-8

1 (d) committed_a_crime_involving_domestic_violence_or_a_crime_involving
2 serious_violence_or_a_class_A_felony_offense_defined_in_the_penal_law
3 while_armed_with_a_firearm.

4 4. In_determining_whether_the_defendant_presents_a_high_risk_of_flight
5 or_a_current_threat_of_physical_danger_to_a_reasonably_identifiable
6 person_or_persons_and_whether_no_conditions_or_combinations_of_condi-
7 tions_in_the_community_will_suffice_to_contain_such_risk_or_threat,the
8 court_may_take_into_account_the_following_information:

9 (a) the_nature_and_circumstances_of_the_charged_offense;

10 (b) the_weight_of_the_evidence_against_the_defendant,except_that_the
11 court_may_consider_the_admissibility_of_any_evidence_sought_to_be
12 excluded;

13 (c) the_defendant's_current_and_prior_history_of_failure_to_appear_in
14 court_whether_such_failures_to_appear_were_willful;

15 (d) the_nature_and_the_credibility_of_the_threat_to_the_physical
16 danger_of_a_reasonably_identifiable_person_or_persons,_if_applicable;

17 and

18 (e) whether, at the time of the current offense or arrest, the defend-
19 ant was on probation, parole, or on release pending trial, sentencing or
20 completion of a sentence in this state or other jurisdictions.

21 § 545.40 Order for pretrial detention.

22 In a pretrial detention order issued pursuant to section 545.10 of
23 this article, the court shall:

24 1. include written findings of fact and a written statement of the
25 reasons for the detention; and

26 2. direct that the eligible defendant be afforded reasonable opportu-
27 nity for private consultation with counsel.

28 § 545.50 Reopening of pretrial hearing.

01/16/18 48 12670-01-8

1 A pretrial detention hearing may be opened, before or after issuance
2 of a pretrial detention order by the court, by motion of the people or
3 the defendant, at any time before trial, if the court finds either a
4 change of circumstances or that information exists that was not known to
5 the people or to the defendant at the time of the hearing, that has a
6 material bearing on the issue of whether defendant presents a high risk
7 of failure to appear or a current threat to the physical safety of a
8 reasonably identifiable person or persons and whether no conditions or
9 combination of conditions will suffice to contain such risk or threat.

10 § 545.60 Length of detention for defendant held under a pretrial
11 detention order.

12 1. If a pretrial detention order is issued, a defendant shall not
13 remain detained in jail for more than one hundred eighty days after the
14 return of the indictment, if applicable, until the start of trial. In
15 cases where no indictment is required, the one hundred eighty days shall
16 run from the pretrial detention order.

17 2. (a) The time within which the trial of the case commences may be
18 extended for one or more additional periods not to exceed twenty days

19 each on the basis of a motion submitted by the people and approved by
20 the court. The additional period or periods of detention may be granted
21 only on the basis of good cause shown, and shall be granted only for the
22 additional time required to prepare for the trial of the person. Good
23 cause may include, but not be limited to, the unavailability of an
24 essential witness, the necessity for forensic analysis of evidence, the
25 ability to conduct a joint trial with a co-defendant or co-defendants,
26 severance of co-defendants which permits only one trial to commence
27 within the time period, complex or major investigations, scheduling
28 conflicts which arise shortly before the trial date, the inability to

01/16/18 49 12670-01-8

1 proceed to trial because of action taken by or at the behest of the
2 defendant, the breakdown of a plea agreement on or immediately before
3 the trial date, and allowing reasonable time to prepare for a trial
4 after the circumstances giving rise to a tolling or extension of the one
5 hundred eighty day period no longer exists.

6 (b) In computing the one hundred eighty days from indictment, if
7 applicable, or the date of pretrial order, to commencement of trial, the
8 following periods shall be excluded:

9 (i) any period from the filing of the notice of appeal to the issuance
10 of the mandate in an interlocutory appeal;

11 (ii) any period attributable to any examination to determine the
12 defendant's sanity or lack thereof or his or her mental or physical
13 competency to stand trial;

14 (iii) any period attributable to the inability of the defendant to
15 participate in the defendant's defense because of mental incompetency or
16 physical incapacity; and

17 (iv) any period in which the defendant is otherwise unavailable for
18 trial.

19 3. If a trial has not commenced within one hundred eighty days from
20 indictment, if applicable, or pretrial detention order, as calculated

21 above, and the defendant remains in custody, the defendant shall be
22 released on recognizance or under non-monetary conditions of release
23 pending trial on the underlying charge, unless:

24 (a) the trial is in progress,

25 (b) the trial has been delayed by the timely filing of motions,
26 excluding motions for continuances;

27 (c) the trial has been delayed at the request of the defendant; or

01/16/18 50 12670-01-8

1 (d) upon motion of the people, the court finds that a substantial and
2 unjustifiable risk to the physical safety of a reasonably identifiable
3 person would result from the defendant's release from custody, and that
4 no appropriate conditions for the defendant's release would reasonably
5 address that risk, and also finds that the failure to commence trial in
6 accordance with the time requirements set forth in this section was not
7 due to unreasonable delay by the people. If the court makes such a find-
8 ing, the court may set an additional period of time in which the defend-
9 ant's trial must commence.

10 § 24. Subsection (b) of section 6805 of the insurance law, as added by
11 chapter 181 of the laws of 2012, is amended to read as follows:

12 (b) A charitable bail organization shall:

13 (1) only deposit money as bail in the amount of [two] five thousand
14 dollars or less for a defendant charged with one or more [misdemeanors]
15 offenses as defined in subdivision one of section 10.00 of the penal
16 law, provided, however, that such organization shall not execute as
17 surety any bond for any defendant;

18 (2) only deposit money as bail on behalf of a person who is financial-
19 ly unable to post bail, which may constitute a portion or the whole
20 amount of such bail; and

21 (3) [only deposit money as bail in one county in this state. Provided,
22 however, that a charitable bail organization whose principal place of
23 business is located within a city of a million or more may deposit money

24 as bail in the five counties comprising such city; and
25 (4)] not charge a premium or receive compensation for acting as a
26 charitable bail organization.

01/16/18 51 12670-01-8

1 § 25. Paragraph (a) of subdivision 9 of section 216.05 of the criminal
2 procedure law, as amended by chapter 258 of the laws of 2015, is amended
3 to read as follows:

4 (a) If at any time during the defendant's participation in the judi-
5 cial diversion program, the court has reasonable grounds to believe that
6 the defendant has violated a release condition or has failed to appear
7 before the court as requested, the court shall direct the defendant to
8 appear or issue a bench warrant to a police officer or an appropriate
9 peace officer directing him or her to take the defendant into custody
10 and bring the defendant before the court without unnecessary delay;
11 provided, however, that under no circumstances shall a defendant who
12 requires treatment for opioid abuse or dependence be deemed to have
13 violated a release condition on the basis of his or her participation in
14 medically prescribed drug treatments under the care of a health care
15 professional licensed or certified under title eight of the education
16 law, acting within his or her lawful scope of practice. The provisions
17 of [subdivision one of] section 530.60 of this chapter relating to
18 [revocation of recognizance or bail] issuance_of_securing_orders shall
19 apply to such proceedings under this subdivision.

20 § 26. Subdivision 3 of section 620.50 of the criminal procedure law is
21 amended to read as follows:

22 3. A material witness order must be executed as follows:

23 (a) If the bail is posted and approved by the court, the witness
24 must[, as provided in subdivision three of section 510.40,] be released
25 and be permitted to remain at liberty; provided that, where the bail is
26 posted by a person other than the witness himself, he may not be so
27 released except upon his signed written consent thereto;

01/16/18 52 12670-01-8

**1 (b) If the bail is not posted, or if though posted it is not approved
2 by the court, the witness must[, as provided in subdivision three of
3 section 510.40,] be committed to the custody of the sheriff.
4 § 27. This act shall take effect November 1, 2019.**

A More Just New York City:

Report of the Independent Commission on
New York City Criminal Justice and
Incarceration Reform

A MORE JUST NEW YORK CITY

Independent Commission on New York City
Criminal Justice and Incarceration Reform



Dear Fellow New Yorkers:

As the chairman of the Independent Commission on New York City Criminal Justice and Incarceration Reform, it is my pleasure to share with you this report.

New York City Council Speaker Melissa Mark-Viverito called the Commission into existence just over a year ago. Since that time, the 27 members of the Commission – along with our research and strategic partners from the private and non-profit sectors – have worked diligently to study the criminal justice system in New York City, with a particular focus on what should be done with Rikers Island. We heard from a broad array of stakeholders, including prosecutors, clergy, public defenders, correction officers, civil rights leaders, victim advocates, elected officials, community leaders, the formerly incarcerated, and their families. We sought input from New York residents through our website and at numerous public meetings in each of the five boroughs. And we conducted independent and in-depth analysis of the available data and research.

The perspectives and voices we solicited were diverse. There was disagreement on many issues. But there was one important common thread across what we heard: **our criminal justice system requires dramatic change.**

We entered the process with no predetermined judgment. I asked the members of the Commission -- law enforcement officials, business leaders, judges, academics, and community activists alike -- to look at the justice system with a fresh set of eyes. We let the facts be our guide as we examined both the successes and the failures of recent years.

But we have done more than just look at what was – we have sought to articulate what could be.

The result is a vision of a twenty-first century criminal justice system that all New Yorkers can be proud of. This system will be animated by a new set of affirmative goals – keeping people safe, aiding victims, responding to community needs, and crafting proportionate, meaningful, and compassionate responses to unlawful behavior.

The report that follows is the product of a unified Commission. In laying out this blueprint, we build on a solid foundation. For more than 20 years, New York City has successfully driven down both crime and incarceration. The City has proven that **more jail does not equal greater public safety.** Indeed, an emerging body of research suggests that jail can actually make us less safe, leading to more criminal behavior and undermining the health of families and communities alike.

We believe that a twenty-first century justice system must acknowledge the multiple harms that incarceration, and Rikers Island in particular, has caused hundreds of thousands of New Yorkers, their families, and their communities. And it must acknowledge that these harms fall disproportionately on communities of color. To heal and restore hope, jail must become a last resort rather than the path of least resistance.

Dramatically reducing incarceration is just part of the larger project of reimagining justice, however. Going forward, the idea of community justice must become standard operating practice – investing in New York City neighborhoods damaged by past practice and creating stronger links between criminal justice agencies and the people they exist to serve. Going forward, every decision and interaction – whether on the street, in the courthouse, or behind the walls of our jails – must seek to advance the fundamental values of dignity and respect. And going forward, **we must close the jail complex on Rikers Island. Period.**

Rikers Island is a stain on our great City. It leaves its mark on everyone it touches: the correction officers working back-to-back shifts under dangerous conditions, the inmates waiting for their day in court in an inhumane and violent environment, the family members forced to miss work and travel long distances to see their loved ones, the attorneys who cannot easily visit their clients to prepare a defense, and the taxpayers who devote billions of dollars each year to keep the whole dysfunctional apparatus running year after year. Put simply, **Rikers Island is a 19th century solution to a 21st century problem.**

We reviewed, studied, and debated every possible solution to the problem of Rikers. We have concluded that simply reducing the inmate population, renovating the existing facilities, or increasing resources will not solve the deep, underlying issues on Rikers Island. We are recommending, without hesitation or equivocation, permanently ending the use of Rikers Island as a jail facility in any form or function.

Closing Rikers Island is far more than a symbolic gesture. It is an essential step toward a more effective and more humane criminal justice system. **We must replace our current model of mass incarceration with something that is more effective *and* more humane** – state-of-the-art facilities located closer to where the courts are operated in civic centers in each borough.

Rikers Island is not just physically remote – it is psychologically isolated from the rest of New York City. Rikers severs connections with families and communities, with harmful consequences for anyone who spends even a few days on the Island.

That's why we believe that a smaller, borough-based jail system is critical. Our future jails must promote the safety and well-being of both correction officers and the individuals they supervise, the vast majority of whom are awaiting trial and have been found guilty of no crime. These goals are best served when we make clear that the point of correction is exactly that -- to correct. Going forward, our jails must work to reduce crime through rehabilitation.

This is not just the right thing to do – it is also the fiscally prudent thing to do. Indeed, as you will see in the pages that follow, we believe that closing Rikers Island will result in significant cost savings. It will also enable us to move forward as a City, boldly preparing for the challenges that the next century will bring. Permanently ending the use of Rikers Island as a de facto penal colony will free up the space needed for the kinds of transportation and energy infrastructure projects that are crucial to the future of our great City.

I am acutely aware that in order to enact our recommendations, we will need courageous leadership from our City and State officials. Creating a more just New York City will not happen

overnight -- and it will not happen with the support of a single person or entity. It is now more critical than ever that we confront the challenges ahead together. This report serves as a roadmap for what must be done.

By working together to close Rikers Island, an international symbol of despair and damage, New York will be a beacon of safety, humanity, and justice for cities across the country and around the world.

Let New York City lead the way, as it has done so often in the past.

Sincerely,

The Hon. Jonathan Lippman

Independent Commission on New York City Criminal Justice and Incarceration Reform

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Executive Summary

In her 2016 State of the City address, New York City Council Speaker Melissa Mark-Viverito called for fundamental criminal justice reform. Titling her speech “More Justice,” Mark-Viverito announced the creation of an independent commission to explore “how we can get the population of Rikers [Island] to be so small that the dream of shutting it down becomes a reality.”

The Speaker appointed former New York State Chief Judge Jonathan Lippman to chair the Independent Commission on New York City Criminal Justice and Incarceration Reform. Under Judge Lippman’s leadership, 27 commissioners were selected, including leaders in business, philanthropy, academia, law, and social services, as well as those with personal experience being held on Rikers Island. Several organizations from the non-profit and private sectors were engaged to provide research and strategic support, including the Center for Court Innovation, Latham & Watkins LLP, Vera Institute of Justice, CUNY Institute for State and Local Governance, Forest City Ratner Companies, Global Strategy Group, and HR&A Advisors. To ensure its independence, the Commission relied on philanthropic support, taking no money from government or political entities.

For more than one year, the Commission has studied the City’s criminal justice system, and Rikers Island in particular. In addition to gathering formal testimony and interviewing a wide range of experts—city officials, corrections staff, formerly incarcerated New Yorkers and their families, prosecutors, defense attorneys, clergy, service providers, advocates, and others—the Commission undertook a far-reaching community engagement process, including meetings with the faith community, design workshops, public roundtables throughout the City, and a website to solicit public input. The Commission also performed in-depth data analysis and evaluated model programs and practices from across the country and around the world.

Jail in New York City

The presumption of innocence is one of the foundations of the American legal system. Yet on any given day, three-quarters of the roughly 9,700 people held in New York City’s jails are awaiting the outcome of their case, nearly all of them because they cannot afford bail. These individuals have been found guilty of no crime.

Research shows that incarceration begets incarceration. Spending time behind bars also begets other problems, including eviction, unemployment, and family dysfunction. These burdens fall disproportionately on communities of color. On any given day, nine out of ten people being held behind bars in New York City are either Black (55 percent) or Latino (34 percent).

The vast majority of those incarcerated in New York City, more than 7,500, are housed in nine jails located on Rikers Island (the rest are held in smaller facilities around the City). Many of these facilities are falling apart. And many lack the kinds of basic services, including air conditioning and space for social services, that are essential to a modern correctional system. This creates a toxic environment for everyone—both those being held and those doing the guarding.

The Commission heard multiple reports of mistreatment on Rikers Island, ranging from small, daily humiliations to occasional acts of shocking brutality. Much of this testimony confirmed the stark conclusion of the U.S. Attorney's Office in Manhattan: there is a deep-seated culture of violence on Rikers Island.

Another problem is physical isolation. Rikers Island is located far from the City's courthouses and neighborhoods. It is accessible only by a narrow bridge. The Department of Correction spends \$31 million annually transporting defendants back and forth to courthouses and appointments off the Island. Visiting a loved one on Rikers can take an entire day, forcing people to miss work and make costly arrangements for child care.

Rikers' inaccessibility also presents challenges for the men and women who work there. The Commission heard from correction officers who slept in their cars between shifts rather than travel home to be with their families. Perhaps most importantly, Rikers' isolation encourages an "out-of-sight, out-of-mind" dynamic, to the detriment of all parties.

Rikers Island essentially functions as an expensive penal colony. The Commission has estimated that the annual price of housing someone in a New York City jail is \$247,000. The costs, both moral and financial, of this arrangement might be readily borne by New York City taxpayers if there were compelling evidence that it helped to keep the City safe. But no such evidence exists.

For more than 20 years, New York City has successfully driven down both crime and incarceration, a trend which has continued under Mayor Bill de Blasio. The City has proven that more jail does not equal more public safety. Indeed, an emerging body of research suggests that jail can actually undermine public safety, encouraging criminal behavior and undermining the stability of families and communities.

The Report

The report that follows is the product of a unified Commission. All 27 members came together behind a vision for a criminal justice system in New York City that embodies the civic values of liberty, equality, dignity, justice, and public safety. Central to this vision is the primary recommendation of the Commission:

Rikers Island must be closed.

The Commission has concluded that shuttering Rikers Island is an essential step toward building a more just New York City. Refurbishing Rikers is not enough. Our current approach to incarceration is broken and must be replaced. Acknowledging this, the Commission recommends permanently ending the use of Rikers Island as a jail facility.

The Commission believes that confinement is necessary when individuals are a threat to themselves or others, but that its use should be a last resort. In addition to using jail sparingly, the Commission believes it must be used humanely, with an eye toward preparing people to re-enter society and ending the costly cycle of repeat offending.

The reforms outlined in this report would cut New York City’s jail population in half over the next ten years, allowing for the closure of Rikers and its replacement by a smaller system of state-of-the-art jails—one for each borough—situated near the courthouses they serve.

The report also lays out a plan for the redevelopment of Rikers Island, transforming it to meet the energy and transportation demands of our expanding City. To acknowledge the harms that correctional facilities on Rikers Island have wrought over the years, particularly to communities of color, the Commission recommends a memorial and/or museum to explain to future generations the history of the Island.

The Commission’s recommendations are organized into three sections:

- 1) Rethinking Incarceration
- 2) The Future of Jails
- 3) Reimagining the Island

Rethinking Incarceration

In order to help create a more fair and effective justice system that prioritizes victim and community safety, the Commission recommends reforms at multiple stages of the criminal justice process: arrest, arraignment, case processing, and sentencing. If fully implemented, these proposals would reduce the average daily jail population in New York City to less than 5,000 individuals.

Arrest: Creating Off-Ramps

- Crime Prevention: The best incarceration reduction strategy is to prevent crime from happening in the first place. Acknowledging this, the City should invest in a range of neighborhood-based crime prevention strategies that seek to change community norms, address local hot spots, and improve the life trajectories of young people. Examples include youth development initiatives, neighborhood beautification projects, employment programs, Cure Violence efforts, and others. These investments should be targeted to the neighborhoods that have been most damaged by Rikers Island.
- Diversion: The City should establish diversion programs to keep low-level misdemeanor cases out of the criminal courts. Eligible defendants would be brought to a community-based service provider that would conduct an assessment, require participation in social services or community restitution, and offer voluntary assistance. In addition, some low-level charges, including cases involving minor drug possession, should be moved from the criminal to the civil system and processed in summons court. The Commission estimates that these two reforms could redirect 110,000 misdemeanors each year.
- Mental Health: The City should continue to support efforts to ensure that those with mental health needs are directed to services, not incarceration, wherever appropriate. This includes training for all police officers in crisis intervention and the creation of additional public health centers where officers can link those in need to services.

Arraignment: Reducing Pretrial Detention

- Pretrial Supervision: In lieu of bail, which nine in ten defendants are unable to pay in time to avoid a jail stay, the City should rely on pretrial supervision for those defendants who are not released on their own recognizance. Pretrial supervision should include rigorous monitoring and links to services. It should become the default option, replacing money bail, for those who are charged with misdemeanors and nonviolent felonies, as well as for some young people charged with more serious offenses.
- Informed Decisions: To improve decision making, the City should create three risk assessment tools measuring a defendant's future risk of re-offense, violence, and domestic violence. Developers of the assessments should take steps to promote transparency and mitigate the potential for racial or gender bias. The City should also implement a financial assessment tool to help determine appropriate bail amounts that each defendant can afford.
- Payment of Bail: The City should simplify the payment process in an effort to reduce the number of short jail stays resulting solely from the difficulty of paying bail at arraignment.
- Money Bail: New York should eliminate money bail. A person's freedom should not be determined by what's in his or her wallet. Any legislative solution must allow judges to consider the risk to public safety in making pretrial release decisions. Legislation must also contain sufficient safeguards to ensure that the overall use of pretrial detention does not increase. Even while we wait for thoughtful legislation that meets these requirements, it is possible to drastically limit money bail to a small fraction of the cases.

Case Processing: Reducing Delays

- Benchmarks: Currently, more than half of the City's jail population consists of indicted felonies in the pretrial stages. In keeping with the court system's official standards, indicted felonies should be resolved within six months and misdemeanors within 90 days.
- Trials: Very few cases are resolved by trial in New York City—less than one percent each year. The average time to a trial verdict is more than 20 months. All parties should work to expedite early discovery and engage in meaningful plea bargaining as early as possible. In cases that cannot reach a plea, firm trial dates should be scheduled. The state should pass new legislation requiring trials be held more speedily.
- Adjournments: Cases in New York City can go a month or more in between court appearances. All parties should seek to minimize time between appearances. Judges should enforce an upper limit of 30 days for adjournments.

- Procedural Justice: Every defendant and victim who comes into contact with the New York City criminal justice system should be treated with dignity and respect. The system should actively work to improve perceptions of fairness and encourage compliance with the law.

Sentencing: Expanding Alternatives

- Elimination of Short Jail Sentences: On any given day, more than 1,200 individuals are serving jail sentences in New York City, with 69 percent involving 30 days or less in jail. Given the high cost and low impact of such sentences, the City should look to eliminate sentences of 30 days or fewer in favor of community-based alternatives.
- Alternatives to Incarceration: The City should expand the availability of evidence-based alternatives to longer jail sentences. Risk and need assessments should be used to match defendants with appropriate programs.
- Community Justice: Given the documented success of the City's existing community courts at reducing both incarceration and recidivism, the City should consider opening new community courts in neighborhoods with high crime rates, low levels of confidence in justice, and local interest in establishing such a program.
- Raise the Age: Flying in the face of both common sense and the latest science on adolescent brain development, New York is currently one of only two states that prosecute 16- and 17-year-olds as adults. To rectify this, New York State must raise the age of adult criminal justice responsibility to 18 years of age.
- Racial Disparities: As the criminal justice system looks to reduce its reliance on jail, it must also make special efforts to address the overrepresentation of Black/African-Americans and Latinos. This includes regularly reviewing the implementation of all of the criminal justice reforms highlighted in this report to ensure that they are helping to mitigate racial and ethnic disparities.

The Future of Jails

The use of Rikers Island must be phased out over the next ten years and its facilities demolished. Given Rikers' location and history—and the persistent culture of violence and loss of humanity inherent in a system that is based on isolation—rebuilding on the Island is not an option. In place of the penal colony model embodied by Rikers Island, the Commission recommends the establishment of jail facilities in all five boroughs located closer to where New Yorkers live and work.

Cost Analysis

- Human Costs: The isolation of Rikers Island, accessible only by a single city bus line and a narrow bridge, is an impediment to families trying to visit their loved ones, and to service providers and attorneys trying to aid their clients. It also contributes to a culture of violence and neglect. The design of the jails on Rikers with their long, linear corridors, and the decaying physical plant (which provides multiple opportunities to fashion weapons) pose a constant threat to correction officers.
- Fiscal Costs: Aging jail facilities carry significant maintenance costs. In addition, the antiquated design of the City's jail facilities requires more uniformed staff to safely supervise inmates. Construction on the Island costs 10 to 15 percent more than in the boroughs.
- System Costs: The location of Rikers imposes an operational burden on the Department of Correction, the courts, and other system actors, contributing to delays in case processing. Ten percent of the population of Rikers is moved off the Island each day for court appearances. A round trip requires hours to complete at a minimum. The Department of Correction budgets \$31 million each year for transportation costs. There are insufficient private, safe spaces for rehabilitative programming on Rikers. This is especially harmful to those populations requiring special attention, including women, adolescents, and those with mental health issues.

Borough-Based Model

- Community Jails: In place of jail facilities on Rikers Island, the Commission recommends the construction of five state-of-the-art jails, one in each borough. These jails—which would be situated near courthouses in civic centers, rather than in residential neighborhoods—would be more accessible and would reduce transportation costs.
- Capacity: Designed to meet the reduced jail population in years ahead, the system should have a capacity of 5,500 beds, with each facility proportional in size to the number of people held from that borough.
- Community Involvement: Conversations with local communities concerning potential locations for the jails must begin early and the City must ensure that the process is as fair, transparent, and responsive to community concerns as possible. The new jails should be integrated into their surrounding neighborhoods, both in terms of design and uses. Benefits to communities such as new community meeting spaces and services or retail space for local businesses should be incorporated into each facility.

Twenty-First Century Design

- Clustered Housing: Inspired by the best practices employed in other jurisdictions, the Commission recommends the use of single cells arranged around central living areas in a “clustered housing” model. Services should be gathered together in a “town center” approach, allowing individuals to move about as freely as possible.
- Direct Supervision: A “direct supervision” design provides improved sightlines for officers and more options for managing the behavior of those in their custody. By reducing the physical barriers between staff and inmates, this model facilitates constant interaction, helping staff to strengthen communication with inmates and identify problems before they escalate. If properly implemented, this model can significantly reduce violent incidents.
- Programming: Beginning with an evidence-based admissions process, the new jail facilities should begin planning for re-entry from the moment of intake. Jails should have dedicated spaces that are equipped with updated technology to provide medical care, behavioral health care, therapeutic services, and vocational and educational programs. Visiting areas should be welcoming and family-friendly. Dedicated space for correction and programming staff should also be created.
- Women: Jail facilities must be designed to account for the special needs of women. Gender-specific programming must pay particular attention to women with small children and those dealing with histories of abuse and trauma.

Improving Operations

- Staff Training: The Commission recommends investing in a state-of-the-art training academy and doubling the length of the current training of Department of Correction staff. Training should prioritize communication skills, de-escalation, procedural justice, and mental health, among other topics.
- Improving Culture: In recent days, the Department of Correction has put a number of important reforms in motion. True and lasting change will require staff to be infused with a renewed sense of mission and clear expectations. To change the culture of jails, the changes must be embraced by leadership and deliberately spread throughout the system.

Financial Impact

- Costs: Researchers from the Commission performed a fiscal analysis, examining the costs and savings of moving to a borough-based jail system. The total projected construction costs for five new borough facilities and a new staff training facility is approximately \$1.1 billion. The annual cost of this new jail system—including debt service on the capital

expenditures (assuming a 30-year term), the expansion of alternative-to-jail programs, increased training, and enhanced programming for those behind bars—would be \$1.11 billion per year.

- **Savings:** The costs of creating a new, modern, and efficient jail system must be measured against the potential savings to be realized from reducing the jail population. As part of its recommendations, the Commission suggests, over the next decade, reducing the current uniformed employee-to-inmate ratio of 1.08:1 to a projected ratio of 0.73:1. The Commission still recommends maintaining a richly staffed system including civilian and uniformed personnel of 5,700, for a total employee-to-inmate ratio of 1.14:1. This can be achieved safely because there will be fewer individuals who are in jail and because jail facilities will be more efficient and safe. This reduction would result in a potential annual savings of \$1.6 billion. Additional savings would be realized through a reduction in transportation costs.
- **Net Impact:** The Commission's recommendations would eventually save billions of dollars. After approximately ten years, once the City has fully transitioned to borough-based jails, the net impact after subtracting the costs described above would be a benefit of \$540 million in annual budgetary savings. Additionally, renovating or building five new jails and a new correctional academy would lead to approximately 7,800 direct construction jobs over seven years. After 30 years, once all renovation and new building costs are fully paid, the City would then save approximately \$1.3 billion every year in perpetuity. In other words, closing Rikers is a unique opportunity to invest in our future.

Reimagining the Island

Over the next 15 years, Rikers Island should be transformed from a blight to an asset. Even as the City looks to the future of economic development on the Island, it also must honor its past, including the negative experiences of those who spent time behind bars on Rikers.

The Opportunity

Once the jails have been removed, the Island offers an unusual opportunity in a dense, highly-populated City: more than 400 acres to redevelop. While the Island offers a blank slate for urban planners, it also comes with significant challenges, including restrictions related to its proximity to LaGuardia Airport, the nature of the land itself (the Island is mostly composed of landfill), and the lack of public transportation options.

Planning for the Future

The Commission proposes a vision for the island that serves a next generation of critical infrastructure enabling New York City to compete as a twenty-first century global city, generate good-paying jobs, and address major environmental challenges. The vision can take various forms as regional priorities evolve. The Island is uniquely positioned to accommodate an expanded LaGuardia Airport that would reduce delays and could serve as many as 12 million more passengers annually. This expansion could coexist with much-needed next-generation

infrastructure facilities that could help the City meet the ambitious sustainability goals outlined in the Mayor's OneNYC plan by reducing the city's carbon footprint, and removing untreated wastewater from our rivers.

These uses, assuming they include an airport expansion, would directly generate up to \$7.5 billion of annual economic activity and more than 50,000 jobs – the Commission strongly recommends that these jobs must be made accessible to New Yorkers who face employment barriers, including the formerly incarcerated. Modernizing the City's infrastructure would also power up to 30,000 homes with renewable energy, reduce greenhouse gas emissions equivalent to taking up to 150,000 cars off the road, and support additional economic activity and jobs as New York City's population grows to 9 million people (and beyond).

These uses could directly generate up to \$7.5 billion of annual economic activity and more than 50,000 jobs. Modernizing the City's infrastructure would also power up to 23,000 homes with clean energy, reduce greenhouse gas emissions equivalent to taking up to 150,000 cars off the road, and support additional economic activity and jobs as New York City's population grows to 9 million people and beyond.

Historically, lower-income communities have been disproportionately burdened with unwanted city infrastructure facilities. Relocating existing public facilities to the Island would free up local neighborhoods for community redevelopment, generating more public benefits in the form of new jobs, affordable housing, open space, and other public uses.

Because the negative effects of Rikers Island have fallen primarily on communities of color, the Commission also recommends that any redevelopment of the Island include special job training and employment opportunities for New Yorkers who face employment barriers, including the formerly incarcerated. Redevelopment must also offer contracting opportunities for minority business owners.

Conclusion

Honoring the Past

Recognizing the decades of damage inflicted by the jails on Rikers Island, the Commission recommends establishing a memorial and/or museum that would honor the people whose lives were changed forever by their time on the Island—both those held and those who worked there. The goal would be to educate future generations about the history of the Island and spark conversation about the administration of justice. The Commission envisions a participatory planning process involving significant input from communities across the City. Finally, to symbolize the Island's rebirth, as well as its re-alignment with our values as New Yorkers, the Commission believes it makes sense to re-name the Island.

Moving Forward

Closing Rikers Island is a moral imperative. The Island is a powerful symbol of a discredited approach to criminal justice—a penal colony that subjects all within its walls to inhumane conditions. There is no evidence that Rikers improves public safety. There is, however, plenty of evidence to suggest that it negatively and disproportionately impacts people of color.

Closing Rikers Island is essential to the future success of New York City. If it did not serve as a penal colony, the Island could be an important asset, enabling desperately-needed investments in transportation and energy infrastructure.

Closing Rikers Island is an achievable goal. The concrete steps outlined in this report would cut the jail population in half and facilitate the creation of modern, humane jail facilities in each borough.

Closing Rikers Island is a significant step toward a more just New York City. Now is the time to act.

Introduction

In her State of the City address on February 10, 2016, New York City Council Speaker Melissa Mark-Viverito focused on the importance of criminal justice reform. Titling her speech “More Justice,” Mark-Viverito called for the creation of an independent commission that would be charged with reviewing the criminal justice system in New York City and exploring “how we can get the population of Rikers [Island] to be so small that the dream of shutting it down becomes a reality.”

The Speaker appointed former New York State Chief Judge Jonathan Lippman to chair the Independent Commission on New York City Criminal Justice and Incarceration Reform. Under Judge Lippman’s leadership, 27 leaders were selected to serve on the Commission from a variety of fields, including law, academia, business, philanthropy, and the non-profit sector. The Commission included those who have served as law enforcement as well as those with personal experience being held in custody on Rikers Island.

Given a year to complete its work, the Commission chose to focus on three basic issues:

1. Rethinking Incarceration: What policies and practices might be implemented to further reduce the jail population in New York? How can the criminal justice system be reformed to promote fairness and justice at each stage of the process?
2. The Future of Jails: How can jail facilities be designed to enhance the safety, security, and well-being of both correction officers and the individuals they supervise? Is it feasible to close the Rikers Island jail complex and replace it with a smaller, borough-based corrections system?
3. Reinventing Rikers Island: If it no longer housed a jail complex, what should happen with Rikers Island itself? How can the Island best serve the needs of New York in the 21st century?

To answer these questions, the Commission heard formal testimony and conducted interviews with dozens of experts. It engaged the Center for Court Innovation, Latham & Watkins LLP, Vera Institute of Justice, CUNY Institute for State and Local Governance, Forest City Ratner Companies, Global Strategy Group, and HR&A Advisors to conduct original research. And it solicited public input via community forums, design workshops, and meetings with the faith community across New York City as well as a website (*morejustnyc.com*).

This report describes the Commission’s findings. We begin by providing some context. First, we discuss the recent history of criminal justice in New York City. Then we look at the particular challenges that Rikers Island poses to the healthy functioning of the justice system—and New York City generally. Finally, we describe the values that animated our investigation.

A Unique Moment

The Independent Commission on New York City Criminal Justice and Incarceration Reform began its work at a unique moment.

New York City has experienced more than two decades of declining crime rates, a trend which has continued under Mayor Bill de Blasio. The number of homicides plummeted from 2,245 in 1990 to 334 in 2016. Other serious felonies have followed a similar trajectory. In the span of a generation, New York City has been transformed from an international symbol of urban disorder to, by many measures, the safest big city in the United States.

New York has experienced another remarkable development alongside these improvements in public safety: reduced incarceration.

After dramatic growth over the course of the 1980s, New York City's jail population has shrunk significantly in the years since. From 1991 to 2016, the daily jail population declined from more than 20,000 to less than 10,000 -- a 52 percent reduction.¹

In short, the recent history of New York City clearly demonstrates that crime and incarceration can be driven down simultaneously. Contrary to what many people believe, more jail does not mean more public safety.

This story has not been well disseminated. Indeed, a recent phone survey documented that only 15 percent of New Yorkers know that incarceration has been reduced over the past 20 years.²

Given this reality, it is worth pausing here to acknowledge the mayors, police officers, prosecutors, judges, defense attorneys, probation and corrections officials, advocates, alternative-to-incarceration programs and others who have contributed to this success. We applaud the work that has been done to reduce crime and unnecessary incarceration and recommend a future path that is consistent with the trajectory that New York City has established for more than two decades.

Alongside the achievements of the past several decades, there have also been a number of flash points that have thrown the failings of our criminal justice system in stark relief. These include public protests over the New York Police Department's stop, question, and frisk practice and the death of Eric Garner on Staten Island.

For many New Yorkers, the problems of the criminal justice system, particularly around the issue of race, were crystallized by the suicide of Kalief Browder in 2015. As described in *The New Yorker*, Browder was arrested as a 16-year-old for allegedly stealing a backpack. He spent three years on Rikers Island awaiting the resolution of his case. During that time, he suffered brutal treatment at the hands of both correction officers and fellow inmates. He spent months in solitary confinement and attempted suicide on multiple occasions. Browder's criminal case was ultimately dismissed. He killed himself at the age of 22, two years after his release from jail. Browder's story remains a powerful rallying cry for those interested in forging a more just and humane justice system.

Jail in New York City

All of which brings us to the current jail population in New York City.

On any given day, thousands of New Yorkers are held behind bars in City jails. To get a better sense of who these people are, researchers from the Commission took a one-day snapshot of the jail population on September 29, 2016. On that day, 9,753 people were held in a City jail. Here is what we learned about them:

- Pretrial: Three-quarters of the jail population in New York City consists of people who are being held while their cases are awaiting an outcome in court. These individuals have been found guilty of no crime—they are presumed innocent. In nearly all of these cases, the individuals are held due to their inability to make bail.
- Jail Sentences: Another 13 percent of the jail population is composed of individuals convicted of an offense and sentenced to jail. The typical sentence is not very long – more than two-thirds of all sentences are 30 days or less.
- Parole Violations: Six percent of the jail population are individuals held on a parole violation or revocation. These people are either awaiting a revocation hearing or have had their parole revoked and been sentenced to additional incarceration time at Rikers Island. In addition, a small fraction of the jail population are people held temporarily while awaiting transfer to, or returning from, a state prison, or for other miscellaneous reasons.
- Demographics: The jail population is 94 percent male. More than 75 percent of the individuals in jail are aged 25 years or older (two percent are 16 or 17 and 22 percent are ages 18 to 24). The population is also predominantly Black (55 percent) and Latino (34 percent).
- Borough: The Commission determined that 38 percent of the City's jail population comes from Manhattan's criminal court, although Manhattan processed only 29 percent of the criminal caseload in 2016. No other borough comes close, with Brooklyn accounting for the second highest percentage of the jail population at 22 percent. (Note that the Brooklyn figure is less than the borough's 27 percent share of the city's caseload.)
- Location: There are currently nine functioning jail facilities on Rikers Island. On September 29, 2016, 77 percent of those in a City jail were being held in one of these facilities. The remainder were held in borough-based facilities—eight percent at the Vernon C. Bain Center in the Bronx, 6 percent at the Brooklyn Detention Complex, eight percent at the Manhattan Detention Complex, and less than one percent at special wards within either Bellevue or Elmhurst Hospitals.

Of course, numbers can only tell us so much about the jail population in New York City, and Rikers Island in particular. Digging deeper, we found the following:

“A Code of Violence”

Recent years have seen intense scrutiny of Rikers Island. Intrepid reporters from *The New York Times*, *Associated Press*, *New Yorker*, *Village Voice*, *Marshall Project* and other outlets have highlighted the routine mistreatment of people held at Rikers. These journalists have been assisted by a variety of advocacy groups and numerous defense agencies that have worked assiduously to increase public awareness of what happens on Rikers Island.

Various government officials and agencies have also sought to document violence on Rikers Island, including the New York City Board of Correction, the New York City Comptroller, and, perhaps most importantly, the U.S. Attorney for the Southern District of New York. In a 2014 report, the U.S. Attorney’s Office found a systematic pattern of excessive force by Rikers Island correction officers against adolescents. In 2015, the City settled a federal lawsuit over conditions at Rikers Island, agreeing to numerous reforms and a federal monitor.

We did not seek to reinvent the wheel in terms of recording the mistreatment of those held on Rikers Island—all of these reports are readily available to anyone with access to an Internet browser. But we did hear, over and over again, directly from those who had spent time on Rikers Island about the brutal treatment that they received. To cite just one example, a formerly-incarcerated New Yorker who participated in one of the community roundtables we convened put it this way: “[Rikers Island] is a code of violence...when you go to Rikers Island, when you get through the gates, the first thing the COs tell you is ‘enroll in the gladiators’ school.”

A big part of the problem is the model that Rikers Island embodies. The sheer size of the inmate population creates management challenges. The transient nature of the population, with many inmates spending only a few days on the Island, adds to the degree of difficulty. Indeed, we consistently heard from those who had spent time in both that State prison felt safer and less chaotic than jail in New York City.³

“A Ball of Darkness”

In addition to egregious acts of violence, Rikers is a place characterized by daily humiliations.

People held at Rikers regularly complain of inhumane conditions and petty indignities. Little that happens on the Island is designed to set individuals on a more productive and law-abiding path. As one formerly incarcerated person summed it up, “Rikers is its own ball of darkness.”

This darkness falls on all who enter the gates of Rikers. But the Island takes a particularly heavy toll on adolescents, women, and those with mental health issues. As one young adult testified before the Commission:

I went to solitary confinement at the age of 17. I was a child the first time I went to solitary confinement—15 days, then 90 days, then another 90 days, 120 days... Young people, adults—it doesn't matter, because it's going to break a person down mentally and physically and emotionally.

Thankfully, the City has recently committed to moving 16- and 17-year-olds off Rikers Island. It has also sought to ban solitary confinement for those under the age of 21.

Improving the treatment of those with mental health issues may prove more difficult. Combining Department of Correction data with a prior analysis by the Council of State Governments, researchers from the Commission estimate that about 19 percent of people held in city jails have a serious mental illness.⁴ Those with a mental illness are less likely than others to make bail and are incarcerated for more than twice as long pretrial. These outcomes suggest that despite their treatment needs, individuals with mental illness currently receive more, not less, incarceration at Rikers than others.

“The Land That Time Forgot”

The New York City Department of Correction dates back to 1895. Unfortunately, as Ken Ricci, a national expert in jail design, told us, “New York City, the leader in so many ways, is currently in the 19th century in terms of jails.”

The first jail on Rikers Island opened in 1935. Since then, Rikers Island has expanded exponentially. It is in many ways a small city, complete with a power plant, hospital, bakery, and other services designed to serve the tens of thousands of people (inmates, staffers, and visitors) who spend time on the Island each day.

Very few, if any of these facilities could be described as “state-of-the-art.” Many lack air conditioning, making for brutal conditions during the summer months. Leaks and water damage are common occurrences, as are foul smells emanating from the parts of the Island that are composed of landfill. According to one formerly incarcerated person who testified before the Commission: “You’re living with rats, rodents every day if your food isn’t eaten; even if you’re allowed to get food, ants are on it right away.”

The antiquated design of Rikers undermines safety – many of the jails have poor sightlines, bad acoustics, and other features that encourage bad behavior. The outmoded design also creates a need for more correction officers to manage the population.

According to Department of Correction Commissioner Joseph Ponte, no one would choose to build something like Rikers Island today. In his words, Rikers Island is “almost the land that time forgot.”

“Torture Island”

Some of the most moving testimony about Rikers Island came from family members with experience visiting their children or partners. The isolation of Rikers Island, which is only accessible by a single city bus line and requires passing through multiple security checkpoints, means a short visit can take an entire day.

“It’s very exhausting to visit your loved one at Torture Island,” said one parent to the Commission. “The whole process of hours of struggle of traveling by public transportation and hours of searches and waiting and waiting to get that one-hour visit is just very deteriorating for any human to endure.”

The burden of visiting family members falls particularly hard on young children. “My daughter started visiting her father when she was two years old,” described another parent:

She knew when she arrived she had to watch a dog walk by and smell her even though she is scared. Every time the dog came by she would grab the stroller where her brother was to try and protect him. She knows to take her hat, coat and shoes and put it in a bin to push through scanning. She knows to walk through a metal detector and wait on the other side. This process can take all day. My kids speak to their father through a glass wall with holes in it. My son puts his hands to the glass and tried to kiss his dad but I have to explain the glass is dirty. It's unbearable, really. It feels like torture.

“We’re Also Human”

Rikers Island is not an easy place to work. Indeed, many correction officers and health officials find it dehumanizing. As one correction officer told *New York* magazine, “[Rikers] has a smell. I can’t even describe it to you. Worse than a sewer. The Island is its own Island that people on the outside could never understand.”

The physical isolation of the Island creates hardships for correction officers. We heard stories of officers sleeping in their cars between shifts rather than driving home to be with their families.

Working conditions on Rikers Island are difficult. “We deal with a lot of mental and physical abuse, from your inmates to your superiors,” said a correction officer. This includes incidents of “splashing”—inmates hurling urine and feces. It also includes acts of violence, with inmates taking advantage of the failing physical plant to fashion makeshift weapons. In testimony before the Commission, Elias Husamudeen, President of the Correction Officers’ Benevolent Association, stated, “We’re professionals, but we’re also human.”

“Getting to Court on Time”

The process of shuttling defendants from Rikers Island to court—which takes hours at a minimum, given the distance between the Island and courthouses across the City—imposes significant financial and human costs. As one public defender told the Commission, people held at Rikers are “woken at 3 or 4 in the morning to get to court on time, and don’t get back to Rikers until late at night, interfering with their ability even to eat.” She went on to explain:

I recently participated in a six-week trial where we had to beg court staff to let us give a client breakfast before he took the stand to testify in his own defense... That same, very hungry, client had barely slept in weeks because he had to get up at 3 in the morning every day for trial. When you are facing a conviction, the last thing that you should have to worry about is whether the state is effectively preventing you from participating in your own defense by depriving you of sleep and food.

“Cost of Inmate in NYC Almost as Much as Ivy League Tuition”

So read a *Daily News* headline from 2013. Since that time, costs have only gone up. The current cost of incarcerating a person for one night in a City jail is approximately \$678 per day, or

\$247,000 per year.⁵ This estimate includes costs borne directly by the Department of Correction as well as jail-related costs to other City agencies (covering pensions for correction officers; fringe benefits for staff; hospital, medical, and mental health costs for people housed in jail; and defendant transportation). All told, taxpayers will shell out almost \$2.4 billion in fiscal year 2018 to support the City's jail system.⁶ This greatly exceeds the cost of nearly every other jail in the nation.

* * *

The staggering costs of Rikers Island, both moral and financial, might be readily borne if there were convincing evidence that our jails help make the City safer. But there is little to suggest that Rikers Island improves public safety.

Indeed, there is evidence that serving time in jail, even briefly, actually increases criminal behavior. A 2013 analysis in Kentucky found that as little as 48 hours in pretrial detention increased recidivism after release.⁷ In New York City, a Center for Court Innovation study found that sentencing people to jail produced a seven percentage-point increase in the two-year re-arrest rate.⁸

Recidivism is just the tip of the iceberg. Spending time in jail is bad for you on a host of levels. A study involving nearly 1,000 interviews with individuals recently released from Rikers Island documented high rates of homelessness, unemployment, and reduced access to health benefits over a two-year follow up period.⁹ Put simply, individuals who go into jail with problems—substance abuse, mental health disorders, lack of education, etc.—tend to come out with those problems exacerbated.

The adverse effects of incarceration are felt particularly by women. Women enter the justice system with higher rates of mental illness and trauma, as well as greater economic disadvantages. For example, approximately two-thirds of women in jails report having a chronic medical condition.¹⁰ Since almost 80 percent of women in New York City's jails are mothers of young children, their incarceration also has an outsized impact on their families.

Over the last decade, research has also documented the negative effects of incarceration on neighborhoods. High incarceration rates adversely affect the social fabric of already disadvantaged communities, disrupting families and social networks. Removing a large percentage of the primary earners from a neighborhood also has disastrous economic impacts, reducing disposable income and undermining local businesses.¹¹ In New York City, these negative effects have been experienced primarily by communities of color.

Should New York City continue to employ a penal colony model that needlessly confines thousands of local residents on an isolated Island where they, and their guards, are exposed to inhumane treatment that leaves a lifetime of damage? Our answer is unequivocal: "No."

Closing Rikers Island might be a good idea, but is it possible? And what should replace it? On the pages that follow, we seek to answer these questions.

Core Values

The 27 members of the Commission come from different places and diverse professional backgrounds. What we all have in common is a love of New York City. We are committed to helping New York pursue important civic virtues like liberty, equality, and justice.

More specifically, in examining the criminal justice system, we were animated by several basic principles:

- Public Safety: Public safety is fundamental to a civilized society. Everyone who lives, works or visits New York has a right to walk the streets without fear of victimization. Public safety is not the sole responsibility of the criminal justice system, but the system has an important role to play in promoting the rule of law and addressing crime and disorder.
- Due Process: A 21st century system of justice must honor both the letter and spirit of the Constitution. This includes making sure we are living up to the promise of provisions that guarantee the right to a speedy and public trial and prohibit the deprivation of liberty without due process of law.
- Respect: Whenever and wherever they encounter the justice system, New Yorkers should be afforded personal dignity. Defendants and victims alike should be given ample opportunity to tell their side of the story and to understand what is happening to them and why. The system should convey respect not only through interpersonal treatment but also through material conditions, ensuring that precincts, courthouses, jails, and other facilities are clean, well-designed, and user-friendly.
- The Judicious Use of Incarceration: We have jails for a reason. Some individuals are a threat to themselves and to others. But given the manifold harms it causes, incarceration should be used sparingly. And when someone is sent to jail, whether pretrial or post-conviction, the purpose should be to help them change their behavior. Jails should be places of rehabilitation rather than warehouses of human misery.
- Fairness: All New Yorkers should be treated equally and fairly by the justice system. Given the history of the United States, the justice system must take special pains to ensure that this is true regardless of race and class. Criminal justice policies and practices must be examined to ensure that they are not subjecting people of color and low-income individuals to unequal treatment.
- Community: The criminal justice system should work to support the health and vibrancy of New York City neighborhoods. High incarceration rates tend to undercut community cohesion and hinder economic growth. Instead, the justice system should foster community wherever possible. This means investing in crime prevention rather than just reacting after crime occurs. And it means reaching out to local residents to understand their concerns and engage them in promoting neighborhood safety.

- Accountability: Individuals who engage in unlawful behavior should be held accountable through proportionate and meaningful sanctions. Policymakers should be held accountable for devoting the time and resources necessary to improve the criminal justice system.

Over the course of the past 12 months, we saw and heard much that disturbed us. From our investigation, it is clear that the criminal justice system in New York City is falling well short of realizing these ambitions.

But amidst all of the depressing statistics and heartbreaking stories, we also found reasons for hope and optimism. We met dozens of people, both inside the system and outside, who are committed to improving justice in New York. While the media tends to focus on areas of conflict, in truth, there is a great deal of agreement about where we need to go. Police officers and people in communities across our City both want safety. Correction officers and the individuals they supervise both want humane, livable, and dignified conditions. And no one wants to spend billions of taxpayer dollars on ineffective interventions that do not make us safer.

On the pages that follow, we will outline a plan for reforming the criminal justice system in New York City. We believe that it is possible to reduce the jail population to less than 5,000 people over the next decade. These reductions would allow the City to close the jail complex on Rikers Island and move the individuals housed there to more humane and effective facilities in the five boroughs close to the courthouses they serve. Closing the jails on Rikers Island would be a powerful symbol of New York's commitment to doing right by all of its residents. It would also be an important investment in the future of the City, enabling us to create the transportation and energy infrastructure that we will need in order to thrive in the 21st century and beyond.

Rethinking Incarceration

Over the past 12 months, we have heard directly from dozens of former inmates, family members, correction officers, law enforcement officials, victims, and advocates. Amidst this diversity of opinion and perspective, one point became abundantly clear: more jail does not lead to greater safety. New York City has experienced this truth first-hand, having successfully reduced both crime and incarceration over the last two decades.

We also learned that there is still much work to be done. Seventy-five percent of those incarcerated in New York City are pretrial detainees who have been found guilty of no offense. More than two-thirds of all jail sentences involve stays of 30 days or less, an expensive practice with little purpose.

Given the manifold harms that it causes, incarceration should be used thoughtfully and judiciously—a last resort to ensure public safety, not the starting place. Pretrial release and community-based supervision and treatment should become the default. And money should not determine one's liberty.

Our recommendations seek to accomplish these goals. We recommend that the City divert many low-level cases from criminal court entirely. We recommend that only those defendants who pose a risk of future harm to the public based on empirically sound information be detained prior to conviction. We recommend that all criminal justice system actors—judges, prosecutors and defense attorneys—work to ensure that those accused of a crime receive due process and speedy case processing. And we recommend that sentences should be meaningful and designed to protect public safety and promote rehabilitation.

Victims and Survivors

This chapter focuses primarily on forging a different response to those who are prosecuted by the criminal justice system. Even as we do this, we must not lose sight of those who are harmed by crime. Any effort to reform our justice system must incorporate the perspectives of people who have a unique insight into the system—victims and survivors. Too often, the justice system perpetuates victimization by not taking into account the needs and input of victims. Some advocates have even argued that there is a need to create a parallel justice system that places rebuilding the lives of victims at its center.¹²

Over the course of our deliberations, we learned that there is no single, uniform perspective among victims and survivors. Some desire a punitive response from the criminal justice system. But many do not.

According to the authors of a national survey on victims' views of safety and justice, “the overwhelming majority of crime victims believe that the criminal justice system relies too heavily on incarceration, and strongly prefer investments in prevention and treatment to more spending on prisons and jails.”¹³ In the survey, victims of crime favored rehabilitation over

punishment by a two-to-one margin; investments in mental health treatment over prisons and jails by a seven-to-one margin; and investments in drug treatment over prisons and jails by a four-to-one margin.

The Commission's meetings with advocates for crime victims and survivors, including the Downstate Coalition for Crime Victims, supported these findings. For example, Catherine Shugrue dos Santos of the Anti-Violence Project encouraged the Commission to "challenge the binary construct of perpetrators and victims." She and others stressed that many people in jail, particularly women and LGBTQ+ individuals, have been victims as well. A panelist at a Commission community roundtable told us: "the very individual [at Rikers] charged with a crime is also likely a victim of another crime." Our jails are not designed to effectively care for or respond to the needs of these people.

The Commission believes that more community-based models are needed to respond to victimization and hold individuals accountable outside of the formal criminal justice system, including programs that use restorative justice principles to bring victims and those who harm them together to address the impact of crime and to repair the damage.

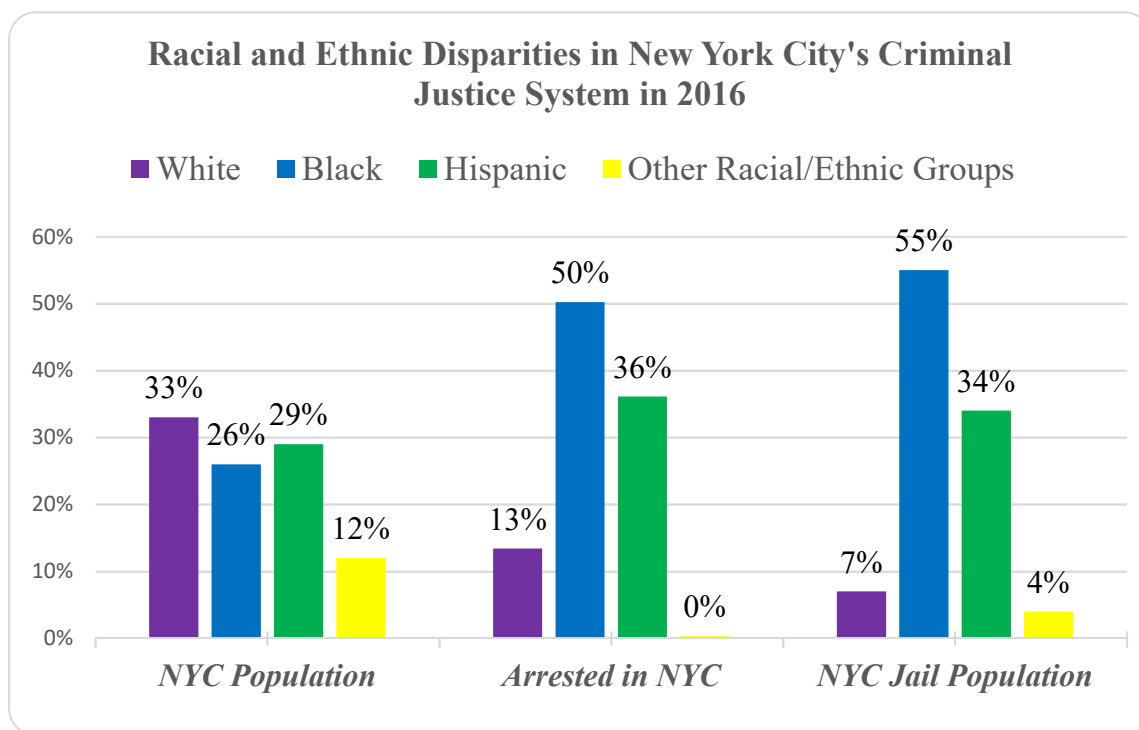
Racial/Ethnic Disparities

Black and Latino New Yorkers have disproportionately borne the impact of New York City's criminal justice policies and are substantially overrepresented at every point in the criminal justice system. Blacks and Latinos comprise slightly more than half of our City's overall population but are nearly 90 percent of our jail population. A range of factors contribute to this reality. Communities of color—both nationally and in New York City—are disproportionately impacted by arrests for quality-of-life and drug offenses.¹⁴ Once arrested, Black and Latino defendants in New York City are more likely than whites to be taken into custody for low-level offenses.¹⁵ One person who shared their ideas with the Commission on www.morejustnyc.com put it this way: "We need to fundamentally shift the punitive mindset that has contributed to the widespread criminalization of mostly poor Black and Brown New Yorkers."

A recent study of prosecutorial patterns in Manhattan points to higher rates of pretrial detention and more punitive plea offers for Black and Latino defendants when compared to similarly situated white defendants.¹⁶ In New York City, sentencing outcomes vary by race too, although the disparities are significantly less pronounced than what has typically been found elsewhere in the country.¹⁷

Members of racial and ethnic minority groups tend to perceive their interactions with criminal justice players more negatively than others. They also enter those interactions with lower expectations—with less trust and confidence in the criminal justice system.¹⁸

The Commission believes that reforms at every stage of the process should seek to reduce racial and ethnic disparities within the criminal justice system.



Vulnerable Populations

While the recommendations in this report endorse a different approach to justice for all cases and defendants, we know that justice system involvement has a particularly profound impact on the following groups:

- Young People:** Recent brain science confirms that through about age 24 our brains are still developing. Young people tend to be more impulsive, emotional, gratification-seeking, and dependent on peer approval—and hence more prone to anti-social behavior—than older adults.¹⁹ Three decades of research has also made clear that young people experience reduced recidivism rates when they are given cognitive-behavioral therapy and other evidence-based treatments.²⁰
- Women:** Histories of trauma are pervasive among women held in custody in New York City. Complicating matters further, approximately 80 percent have young children.²¹ Given these dynamics, there is a real need for gender-specific programming both inside and outside of jail facilities. Employment services are particularly needed. The New York Women's Foundation recently identified several examples of promising gender-responsive treatments, all of which are trauma-informed.²²
- Mental Health:** Mental health problems bring many New Yorkers into the criminal justice system. In order to be effective, the justice system must help address the treatment needs of these people. In some cases, this will mean off-ramping arrestees out of the system entirely (prior to any formal prosecution) and linking them directly to community-based services. In cases where this is not appropriate, the justice system should make greater

use of interventions like the Brooklyn Mental Health Court, which has shown that judicially-monitored mental health treatment can significantly reduce recidivism with a wide array of felony defendants, including those charged with violent offenses.²³ Besides expanding mental health courts, the Commission also recommends greater citywide investment in the forensic assertive community treatment (ACT) team model, which provides comprehensive community-based services to defendants with multiple, complex needs.²⁴

Leaner, Fairer, and More Effective

In general, the Commission believes that the City's approach to rethinking incarceration should be guided by the following goals:

- Prioritizing Public Safety: Any new system should not compromise public safety. The Commission's recommendations adopt an evidence-based approach that reserves incarceration for those who pose a real, cognizable danger to the public.
- Promoting Informed and Individualized Decisions: An assembly-line system of justice is incompatible with notions of fairness and due process. Judges, prosecutors, and attorneys should be given enough information—and enough time for careful deliberation—to make informed, individualized decisions about each case and each defendant.
- Combatting Racial Disparities: Addressing racial disparities should be a critical component of any effort to reduce the use of jail in New York City.
- Evaluating Impact: New York City has already seen significant incarceration and crime reductions for more than two decades. Our goal is to continue these trends. Any new reforms must be carefully evaluated in a transparent and ongoing manner to assess their impact, shed light on any unintended consequences, and allow for mid-course corrections.
- Preventing Crime: New York City should make robust investments in crime prevention, housing, mental health, education, and workforce opportunities to help people avoid criminal behavior altogether.
- Restoring Public Trust: Low levels of public trust in justice have a corrosive effect, undermining efforts to promote community safety and law-abiding behavior. A system that is fair and procedurally just promotes engagement and confidence among communities, victims, and defendants alike.

In the pages that follow, we set out a vision for a criminal justice system that is leaner, fairer, and more effective. We focus on fundamental changes at four stages of the criminal justice process: arrest, pretrial, case processing, and sentencing.

First, we recommend reforming the moment of arrest by diverting tens of thousands of low-level offenses away from traditional prosecution. Second, we recommend reforming our pretrial

system to reduce the number of people held in custody while awaiting trial. Third, we recommend case processing reforms so that defendants and victims do not have to wait months, or even years, for the resolution of their cases. Finally, we recommend an approach to punishment that prioritizes meaningful sentences and a judicious use of incarceration for *all* types of cases.

If our recommendations are implemented, the Commission projects that admissions to Rikers Island and other borough facilities will drop from 62,000 annually to approximately 30,000. And New York City's jail population will be cut in half, from about 9,700 people to less than 5,000 people in jail on any given day.

1. Reforming the System at the Point of Arrest

In 2016, 249,776 criminal cases passed through the New York City courts. More than four in five (82 percent) carried a top charge of a misdemeanor. Most of these cases involved low-level unlawful conduct such as jumping the subway turnstile, petty theft, possessing a small amount of marijuana, possessing a small amount of other drugs, or driving with a suspended license. In fact, these five charges alone accounted for 102,430 arrests in 2016, or 41 percent of all criminal arrests. (An additional 11,098 violations, which the law deems so minor as to not technically constitute a "crime," were routed to the City's criminal courts in 2016.)²⁵

Many New York City residents demand low-level law enforcement from the New York Police Department; complaints about quality-of-life crime are a regular feature of precinct council and community board meetings. The end result is that our courts are clogged with cases involving low-level offenses.

The enforcement of low-level crimes sweeps many New Yorkers into the system who have never been arrested before. For these people, the potential consequences of an arrest are outsized compared to the unlawful conduct itself. A criminal record can have life-changing implications, and not in a good way.

Another segment of the misdemeanor population cycles through court again and again, stuck in a cycle of arrests and short jail sentences. Judge Alex Calabrese of the Red Hook Community Justice Center calls this phenomenon "doing a life sentence, 30 days at a time." Many of these individuals confront serious challenges such as homelessness, substance use, and mental illness. Cycling these sorts of cases in and out of the system over and over again is costly for the system, counter-productive for the defendants, and damaging to public confidence in justice.

Generally, when an arrest is made, a police officer brings the arrestee to the precinct for processing. Nearly all arrestees are then transferred to holding cells in each borough's criminal court. There, they await an arraignment that usually takes place within 24 hours. For some of these individuals, the 24-hour wait from arrest to arraignment is enough time to upend their lives. People may lose their job or their place in a homeless shelter. There is also the possibility that their children can be removed because no one was at home to take care of them.²⁶

Not all arrests, however, lead individuals to be held in this way. As long as there is no outstanding warrant, the arresting officer has discretion in most misdemeanor and Class E felony cases to issue a Desk Appearance Ticket (DAT), which allows the person to be released until a pre-scheduled arraignment date several months later.²⁷ In 2016, 28 percent of misdemeanor arrests were issued a DAT.²⁸

With or without a Desk Appearance Ticket, everyone currently arrested must appear in criminal court for an arraignment. Many misdemeanor defendants can be predicted in advance to be headed for a case dismissal or adjournment in contemplation of dismissal (ACD). For instance, in 2013, 80 percent of first-time nonviolent misdemeanor defendants ages 16 to 24 had their cases resolved with a straight dismissal or ACD.²⁹ Concluding cases with dismissals only after requiring defendants to go through a time-consuming and often degrading court process undermines the legitimacy of the system and consumes valuable resources without purpose.

Based on 2016 case volume, we estimate that the recommendations provided below would result in more than 100,000 low-level cases being routed out of the criminal courts each year, representing over 40 percent of the total criminal caseload. The diversion reforms proposed in this chapter would also remove approximately 300 individuals from the daily jail population. Shifting large numbers of low-level cases away from court would help transform criminal justice in New York City, establishing a more just and proportionate response to minor offending.

Recent Progress

In recent years, a number of initiatives have been launched in New York City that seek to reduce the burdens on our criminal courts.

For example, in 2016 the City enacted the Criminal Justice Reform Act, which allows police officers to issue civil summonses in lieu of criminal arrest for conduct that violates the local administrative code, such as having an open container of alcohol in public, riding a bicycle on the sidewalk, or being in a park after dusk.³⁰ In 2017, the New York City Council and the Bronx County District Attorney's Office plan to launch community justice panels in four police precincts in the Bronx. People arrested for minor offenses will appear before a panel of specially-trained local residents. The goal is to promote accountability yet avoid the possibility of criminal sanctions or a record of conviction.

In 2015, Mayor Bill de Blasio created the Task Force on Behavioral Health and the Criminal Justice System. Among other things, the task force recommended establishing community-based drop-off centers where police officers and other law enforcement personnel could take individuals facing low-level charges who present with a mental illness.³¹ In New York City, plans are now underway to establish two drop-off centers. Another recommendation was to provide supportive housing and services to New Yorkers with behavioral health disorders who are the most frequent users of the City's emergency rooms, shelter beds, and jails. To date, the City has identified almost 100 participants and placed them in permanent supportive housing.

Pilot Diversion Models in New York City

Project Reset

In 2015, the New York Police Department and Manhattan District Attorney's Office launched Project Reset to divert first-time 16- and 17-year-old misdemeanor defendants prior to court involvement. (Project Reset was also launched in three police precincts in Brooklyn.) In exchange for completing an assessment and two sessions of community-based services, the District Attorney's Office will decline to prosecute the cases of all participants. A planned expansion in 2017 will extend this program to first-time misdemeanor defendants of all ages in Manhattan.

Heroin Overdose Prevention and Education (HOPE) Program. The Staten Island District Attorney's Office piloted the Heroin Overdose Prevention and Education (HOPE) program in early 2017. In collaboration with the NYPD, HOPE targets first-time defendants arrested on misdemeanor drug possession charges. Specifically designed to address the growing heroin problem on Staten Island, eligible participants receive a peer mentor who will take them to one of two community-based resource centers. If the participant engages in treatment, the Staten Island District Attorney will decline to prosecute the case.

Recommendations

1. Jail reduction should begin with crime prevention.

A twenty-first century criminal justice system should do more than respond to crime after it happens. The best way to keep people out of jail is to prevent crime from happening in the first place. New York City's historic drop in crime over the last few decades is evidence that this approach works.

The Commission recommends implementing a multi-pronged, neighborhood-focused crime prevention strategy. A great deal of this is already in place. In recent years, City agencies, non-profit organizations, and community groups have launched an impressive array of crime prevention programs. For example, in 2016, the New York Police Department launched the Neighborhood Policing Strategy and created the Neighborhood Coordination Program in several precincts throughout the City. The precincts are divided into neighborhood-based sectors. Each sector has a dedicated cadre of officers assigned to walk the streets and get to know and strengthen relationships with local residents. Also, the Mayor's Office of Criminal Justice has created an action plan for neighborhood safety (known as "MAP") that expands access to youth development and employment programs, as well as other community resources, in public housing developments with high crime rates. MAP also focuses on making physical improvements, such as better lighting, designed to deter crime and restore abandoned lots.

Other programs that have shown potential in preventing crime include the group violence intervention advocated by the National Network for Safe Communities (NYC Ceasefire), which creates partnerships between community members, law enforcement, and social service providers; Cure Violence, which pairs anti-violence education and community mobilization

efforts with street outreach to individuals at high risk of future violence; and various youth development initiatives, including bullying prevention, conflict resolution, mentoring, and others.

These kinds of initiatives should be continued, strengthened, and expanded. In general, these kinds of investments should focus on the neighborhoods that have traditionally sent the most people to Rikers Island—places like the South Bronx, Brownsville, and East and Central Harlem.

2. Selected offenses should be removed from the criminal justice system and placed in the civil summons system.

The Commission recommends removing a select few low-level offenses entirely from criminal scrutiny and allowing them to be handled in the civil summons system. The goal of this recommendation is to hold individuals accountable, but through a non-criminal process that would eliminate the collateral consequences of an arrest, conviction, or jail time. The Commission recommends that legislators in Albany consider reclassifying four charges as civil, and not criminal, matters: theft of services (using public transportation without paying the fare), low-level possession of marijuana in public view, prostitution, and possession of “gravity knives” (knives that open by force of gravity and that are often used legitimately by those in construction or building maintenance).

3. Diversion programs that keep cases out of court should be expanded.

For low-level misdemeanor charges that still warrant criminal justice scrutiny, the Commission supports the diversion of first-time offenses to avoid prosecution, unnecessary trips to court, and a criminal record. Diversion at this stage would mean immediate removal from the traditional criminal justice system. Instead, at the point of arrest, law enforcement would refer the individuals directly to a community-based provider, where they would be required to participate in a brief risk-needs assessment, a therapeutic class, or community restitution.

4. Law enforcement should be equipped to respond more effectively to individuals with mental health and behavioral health disorders.

Police officers are often called to respond to disruptive behavior by individuals with behavioral health disorders or mental illness. Given this reality, all NYPD officers should be given the tools and training they need to work effectively with this population. The City has already made significant progress, providing thousands of officers with crisis intervention training. All NYPD officers in the training academy should receive 40 hours of training on crisis intervention techniques prior to their first assignment.³² They should also be trained on how to connect individuals with behavioral and mental health needs to community-based resources, including the drop-off centers recommended by the Mayor’s Task Force on Behavioral Health.

5. People whose criminal involvement is driven by behavioral and mental health disorders should be diverted to community-based treatment.

According to Muzzy Rosenblatt of the Bowery Residents Committee, “*If the goal is to stop the behavior, then the arrest and incarceration isn’t going to stop the behavior. Treatment is.*” The Commission recommends creating an alternative to formal arrest for those situations where a person is engaging in unlawful misdemeanor conduct that is clearly driven by underlying

behavioral and mental health problems. The alternative should be modeled after the intervention known as Law Enforcement Assisted Diversion (LEAD), which was first piloted in King County (Seattle), Washington. Since then, LEAD has been replicated in many other jurisdictions across the country, including Albany, New York. Evidence of efficacy is strong.³³

A LEAD-like program should be developed across all five boroughs for people who are arrested on the kinds of offenses that are often driven by underlying mental health and behavioral health disorders. In particular, people arrested on misdemeanor drug possession (involving a small quantities of drugs other than marijuana) and petit larceny (involving shoplifting or theft of a small amount of goods) should be placed in this program. In 2014, the New York City Department of Health and Mental Hygiene found that defendants facing these two misdemeanor charges consistently presented with a serious need for medical and mental health services.

Program participants would engage in a brief community-based intervention and be linked to longer-term voluntary services. The Commission recommends imposing very few criminal history restrictions; program participation should not be limited to first- or second-time arrestees.

6. Obtaining better information about local crime victims, their needs, and their preferences should be a standard feature of the justice system.

Under-reporting of crime undermines the ability of the criminal justice system to work effectively for all communities. To address the dearth of solid information about the views of New York City's crime victims, the City should administer a systematic representative survey. The goal would be to document how widespread victimization is, to identify unmet service needs, and to solicit perspectives on a range of relevant criminal justice topics, including opinions about if and when incarceration is appropriate.

2. Reducing Pretrial Detention

One of the foundations of the American legal system is the presumption of innocence. And yet, on any given day, three-quarters of those held in New York City jails have not been convicted of a crime. These are defendants whose cases are pending in court. The vast majority are being held because they are unable to make bail. As one person noted via the Commission's website, "poverty should not be the reason you are in jail."

The recommendations that follow build on the most effective parts of our pretrial system and seek to repair the parts that are broken. We believe that it is possible to safely and effectively release many defendants without compromising safety. Recent efforts by both the City and nonprofit providers demonstrate that defendants do not need money as an incentive in order to appear in court and comply with conditions of pretrial release. The Commission seeks to build on these positive developments.

The Commission's pretrial reform recommendations can reduce the daily jail population by just over 3,000 individuals. The Commission's projections are based exclusively on reforms that can be implemented right now, within the current statutory framework.

Current Practice

In 2016, 249,776 criminal cases were arraigned in New York City—82 percent on misdemeanor and 18 percent on felony charges. Nearly half of the misdemeanors and just under 3 percent of the felonies were resolved right away at arraignment. In the remaining cases, arraignment judges heard brief oral arguments and then made a decision about whether to release the person on their own recognizance or to set bail.

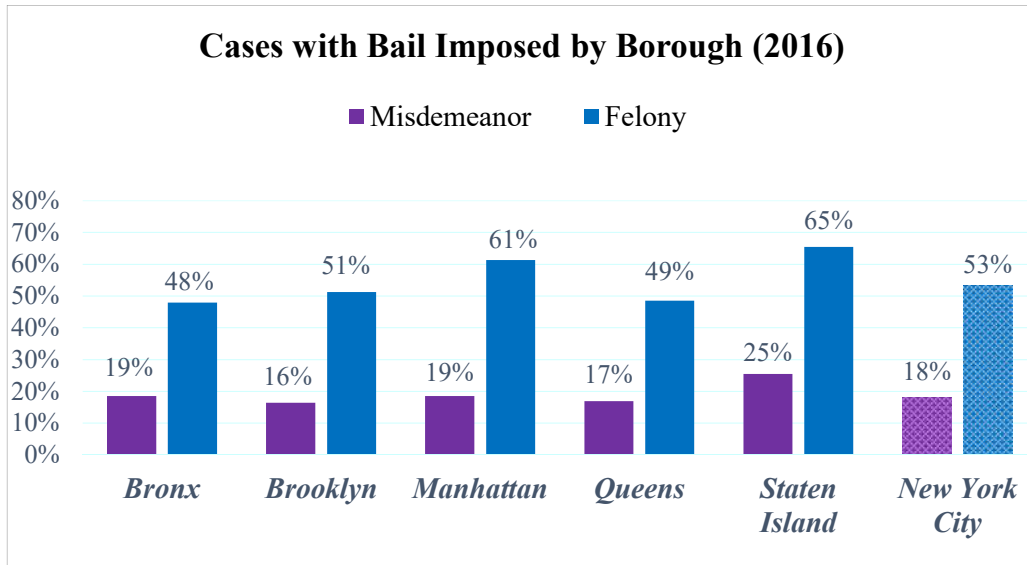
Seven out of ten defendants are released on their own recognizance at this stage of the process. No bail is set in these cases and the accused leaves the courtroom subject to no formal monitoring or court-mandated conditions. With a handful of exceptions, the remaining defendants—roughly three out of every ten—are required to post bail to secure their release.³⁴

As might be expected, the use of bail increases along with charge severity—of these cases that are not resolved at arraignment, bail is set in 18 percent of misdemeanor cases, compared to 47 percent of nonviolent felonies and 63 percent of violent felonies. The use of bail also varies from borough to borough.

Pretrial Release and Bail Decisions (2016)

Arraignment Outcomes	Misdemeanors	Nonviolent Felonies	Violent Felonies	All Cases
Number of Cases Continued After Arraignment	106,788	27,566	16,402	150,756
Release on Recognizance	81%	47%	33%	70%
Supervised Release	0.8%	5%	0.0%	1.5%
Bail Set	17.9%	47.2%	63%	28%
Remanded	0.3%	1.1%	3%	0.8%

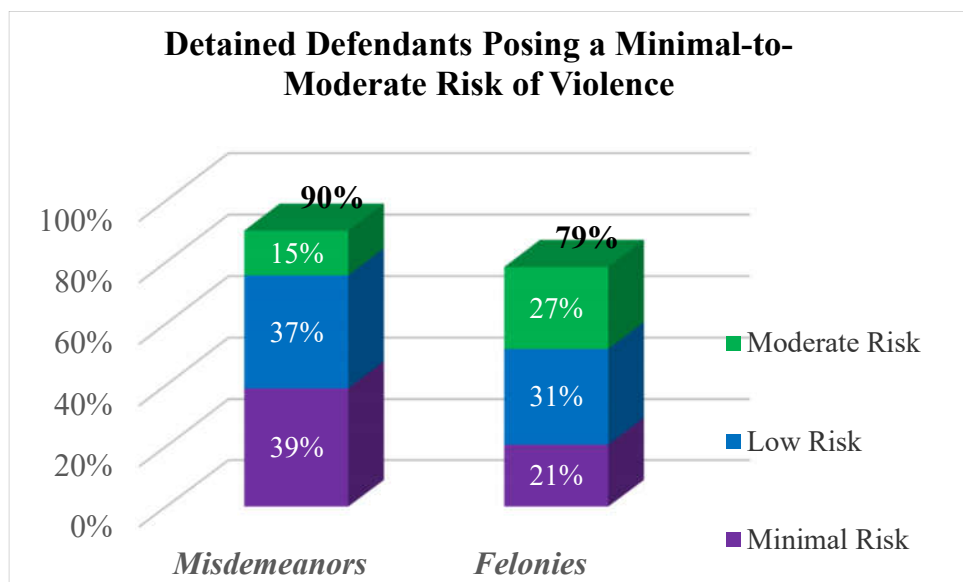
The problems with this situation have been well-documented. Of those who had to make bail in 2016, almost nine in ten (89 percent) were unable to do so at arraignment.³⁵ If bail is not made, defendants remain in pretrial detention. More often than not, this means a trip to Rikers Island.



Public Safety

A survey of New Yorkers revealed that 88 percent of respondents support “holding people in jail prior to a conviction only if they present a high risk to the safety of the community.”³⁶ This is not what happens today. Among misdemeanor defendants detained on bail in New York City, a Center for Court Innovation study found that nearly two-thirds (64 percent) posed only a minimal-to-moderate risk of re-arrest over a two-year tracking period. Even among detained felony defendants, nearly six in ten (59 percent) posed only a minimal-to-moderate risk of re-arrest.³⁷

It is worth noting that this analysis examined the risk of *any* re-offense. When isolating risk of violence—a better measure of whether someone poses a real danger to the public—the same study found that 90 percent of detained defendants with a misdemeanor charge and 78 percent with a felony charge posed only a minimal-to-moderate risk of re-arrest on a violent felony charge over a two-year period.



Undermining the public safety argument further is the reality that the average length of stay in jail is only 17 days for people held pretrial on misdemeanor charges. In fact, over half (55 percent) of misdemeanor pretrial stays last less than five days. Jail stays of this length serve little public purpose. But they can have a massive impact on the life trajectories of defendants—as little as 48 hours in jail can be enough time to increase recidivism rates after release.³⁸

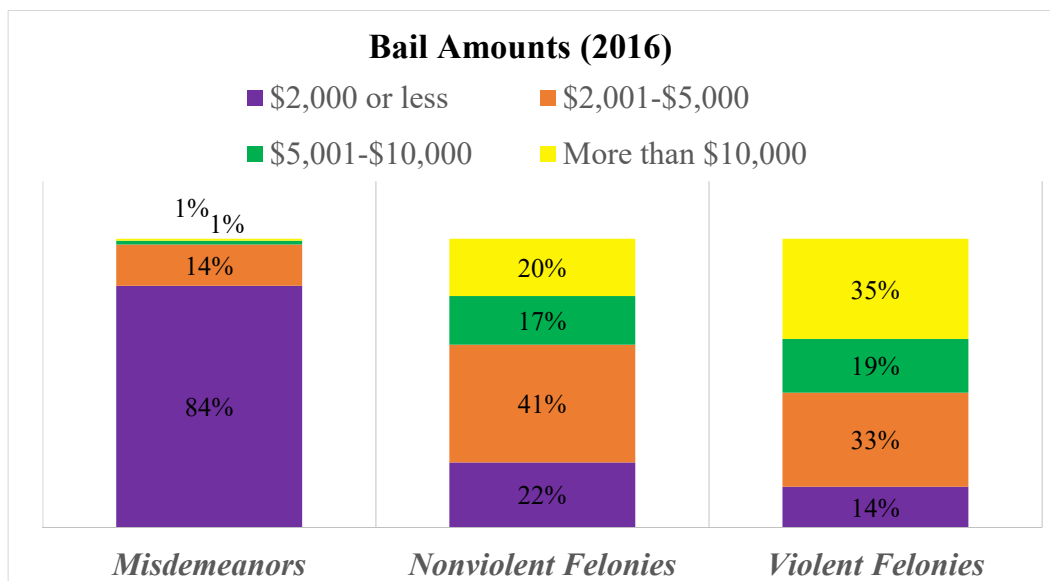
There are many reasons why bail is overused, but much of the problem stems from an overreliance on charge severity. A study by the New York City Criminal Justice Agency found that prosecutors accord particularly heavy weight to charge severity when recommending bail. In turn, judges rely more heavily on the prosecutor’s bail recommendation than any other factor when setting bail.³⁹ Research shows that charge severity is, in fact, a weak predictor of either a defendant’s likelihood of failing to appear for a scheduled court date or of future arrest.⁴⁰

Thus, whether the purpose of pretrial decision-making is to secure court attendance—as it is under current New York State law—or to prevent the release of individuals who pose a high risk to public safety during the pretrial period, the empirical evidence indicates that charge severity should not exert as large an influence as it now does over bail and release outcomes.

Bail Amounts

In 2016, 84 percent of misdemeanor bail amounts were set at \$2,000 or less, compared to 22 percent of nonviolent felony and 14 percent of violent felony bail amounts. Bail amounts exceeding \$10,000 were nearly non-existent among misdemeanors, while 35 percent of violent felony cases had bail set above this amount.

There is precious little evidence that either prosecutors or judges consider a person’s ability to pay bail, even though New York’s bail statute requires that the “financial resources” of the defendant be taken into account.⁴¹ As one advocate noted at a Commission event, “if a person is on public assistance and you know they are receiving \$300 a month, and you give them a \$5,000 bail...that’s a ransom—not a bail.”



While many cannot afford bail, those who do pay bail often are compelled to use scarce financial resources that would otherwise go toward rent, basic necessities, and providing for family and dependents. The process of paying bail in New York City is anything but user-friendly.⁴² One part of the problem is an overreliance on the types of bail that are the most difficult for people to pay. The New York bail statute provides for nine different forms of bail;⁴³ judges are required by law to set at least two different forms of bail.⁴⁴ Yet judges routinely allow defendants to post only the two most onerous forms—cash bail, which requires all money to be paid up front; and insurance company bond, which 10 percent of the bond amount to be deposited as collateral with a bail bond company, which often requires additional non-refundable fees.

Among the alternative forms of bail available under the law, credit card bail involves nothing more than the use of a credit card to pay bail of \$2,500 or less. Arraignment judges allowed credit card bail in only 3 percent of eligible cases in 2013.⁴⁵ Barely used at all are partially secured bonds, which enable the payment of a percentage of the total bail amount (up to 10 percent) up front and the rest only if the defendant doesn't return to court. Similarly, unsecured bonds do not require any up-front payment and are only collected upon failure to appear.

Research shows that unsecured bonds, because they still require payment if the defendant fails to appear in court, are just as effective at guaranteeing court attendance as paying the full bail amount up front.⁴⁶ In New York City, a pilot study of alternative forms of bail confirmed that when partially secured or unsecured bonds were used, more people made bail at arraignments. Even more encouraging, rates of re-arrest and failing to appear remained the same as when cash bail or a commercial bail bond option was set.⁴⁷

When defendants are detained pretrial, the prosecutor inevitably gains leverage. Getting out of jail is an enormous incentive to agree to a plea deal, whether favorable or not. Studies in New York City⁴⁸ and elsewhere⁴⁹ confirm that pretrial detention is directly tied to an increased likelihood of conviction and a sentence involving incarceration. In the words of one individual

who wrote to the Commission’s website, “the link between unaffordable bail and pleading guilty is critical. The level of violence at Rikers would make almost anyone do whatever was necessary to get out—guilty or not.” In New York City, those held in jail throughout the pretrial period had a conviction rate 10 percentage points higher in misdemeanor cases and 27 percentage points higher in felony cases compared to similar defendants not held pretrial. Pretrial detention also increased jail sentences by 40 percentage points in misdemeanor cases and increased state prison sentences by 34 percentage points in felonies.⁵⁰

The bottom line is this: money bail does not have a meaningful impact on appearance in court but it does serve to hold thousands of New Yorkers in jail without a strong public safety rationale.

Recent Reforms

Acknowledging the need for change, reformers both inside and outside of government have recently launched several promising initiatives.

Supervised Release. In 2016, the Mayor’s Office of Criminal Justice created a groundbreaking supervised release program intended to divert 3,000 defendants per year from traditional bail to community supervision. The model includes phone and in-person check-ins, as well as linkages to voluntary services. Participants are accepted after a risk assessment screening that determines whether they are a low, medium-low, medium, medium-high, or high risk for re-arrest. The level of supervision and conditions imposed pretrial are based upon the defendant’s risk assessment score.

The program is open to most misdemeanor and nonviolent felony charges. It excludes violent felonies, Class A felonies, firearms and domestic violence cases, and defendants who lack verifiable contact information.⁵¹ The supervised release program also excludes defendants who are classified as posing a high risk of felony re-arrest. Similar to earlier pilots that produced promising evaluation findings in Brooklyn,⁵² Manhattan,⁵³ and Queens,⁵⁴ the new program is administered by nonprofit agencies in each borough.⁵⁵ The City projects that this program will reduce the jail population by about 200 people on any given day.⁵⁶ So far, the supervised release program is successfully meeting its volume targets, with 2,445 intakes in the last ten months of 2016.⁵⁷ While this volume amounts to only 1.8 percent of all cases not resolved at arraignment,⁵⁸ it has nonetheless made a promising start and lays the foundation for many of the Commission’s recommendations that follow.

Charitable Bail Funds. In 2012, New York State passed a law that allows for the licensing and operation of charitable bail funds that may post bail in misdemeanor cases where bail is set at \$2,000 or less. The Bronx Freedom Fund, in operation since 2012, and the Brooklyn Community Bail Fund, since 2014, have bailed out over 2,000 people combined. Overall, the rates of court appearance are strong. Based on this success, The New York City Council voted to invest \$1.4 million in a citywide charitable bail fund, the Liberty Fund, to be launched in 2017.

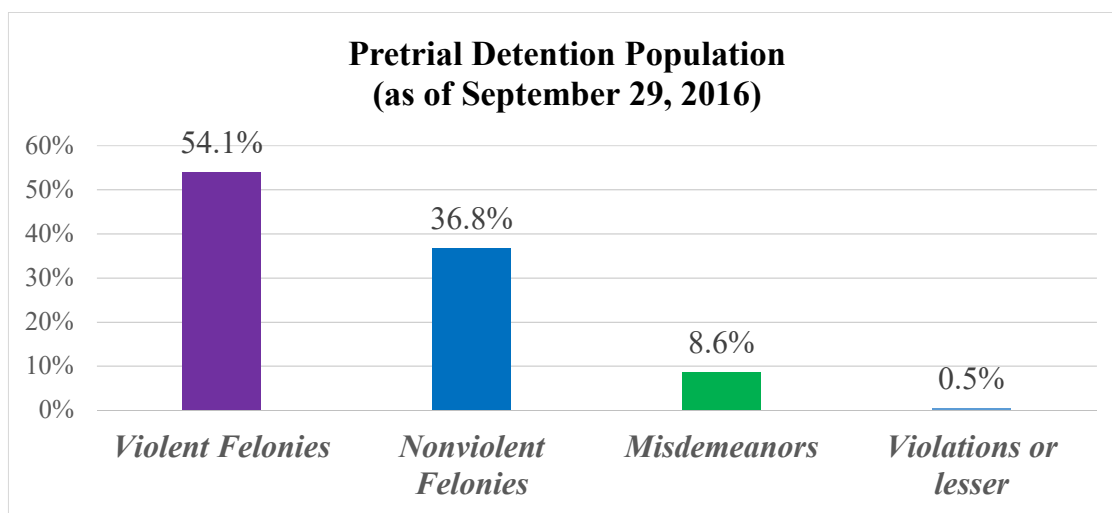
Other Bail Initiatives. The Mayor’s Office of Criminal Justice has undertaken other important initiatives, such as introducing a new, more accurate risk assessment tool to predict failure to

appear in court. Currently the assessment tool used at arraignment classifies 49 percent of defendants as posing a high risk of failing to appear.⁵⁹ Yet, the data shows that these individuals had only a one in five chance of failing to appear in court and a one in ten chance of both failing to appear and not returning within 30 days.⁶⁰ The new failure to appear risk assessment tool will seek to address these problems. The Mayor's Office also established the Bail Lab to implement a number of bail payment reforms, including creating an online bail payment option; installing ATMs in all courthouses; and ensuring that the court is promptly notified whenever a bail amount of \$1 is set for administrative reasons and this \$1 fee is holding a defendant in jail.

Recommendations Within the Current Statutory Framework

The Commission's pretrial justice recommendations fall into two categories—those that can be implemented immediately and those that require legislative changes. All of the recommendations seek to promote public safety; provide an incentive for defendants to attend future court dates; and protect the constitutional rights of the accused.

We can make great strides within the current statutory framework, creating a more robust framework to support supervised release and making it easier for defendants to pay bail. In developing these recommendations, the Commission recognizes that great care must be taken to avoid net widening, which would occur if individuals who are currently released without conditions inadvertently end up facing more onerous requirements in the future. To accomplish this will require discipline on the part of three principal parties—judges, defense attorneys, and prosecutors. The Commission recommends that the City establish a routine training and briefing protocol on bail alternatives for judges whenever they are assigned to arraignment court, as well as training for all prosecutors and defense attorneys who handle cases at arraignment.



7. An assessment tool should be used to measure a defendant's ability to afford bail.

Currently, the courts are not provided with meaningful information about a defendant's ability to afford bail unless it is provided by a defense attorney.⁶¹ The Commission supports the implementation of an ability-to-pay assessment tool that would cover employment status, sources

of income, public assistance, total household income, expenses, access to a bank account or credit card, housing assets, and responsibility for dependents. The questions could be adjusted to explore both the defendant's financial situation and that of family or friends who might be available to pay bail. The tool would produce a financial resources score and a formal bail amount recommendation. The tool should be piloted on a sample of defendants to measure validity and reliability.

8. Validated risk assessment tools should be used to measure a defendant's future risk of: (a) any re-offense, (b) violence, and (c) domestic violence.

Formal risk assessment tools use past patterns to predict future behavior. Risk assessments have long been used in medicine to predict life expectancy, in finance to predict future profits or loss, in education to predict likelihood of dropping out, and in criminal justice to predict recidivism.

Most risk assessment tools look at factors such as prior arrests and convictions, prior failure to appear in court, revocations of probation or parole, the severity of the current charges, and demographics such as age and gender. Some, but not all, risk assessments use a direct interview with defendants to gain information about other circumstances, such as family ties, employment, housing, and treatment needs such as substance use or mental health disorders.⁶²

In the criminal justice context, formal risk assessments have been shown to outperform individual judgments regarding whether someone will be re-arrested.⁶³ Accordingly, risk assessments are a powerful aid to decision-makers and can serve to improve (but not replace) professional judgment. The City's supervised release program uses a risk assessment tool that identifies those defendants suitable for the program and recommends an appropriate level of supervision and conditions based on the assessment results.

The Commission recommends that the City build upon this foundation and create three new risk assessment tools to be used at arraignment with defendants who are not appropriate for release on recognizance.

Each tool should be developed through a participatory process and the factors used to assess risk, and the relative weight given to each, should be publicly disclosed. In general, risk assessment tools should also be rigorously tested for bias. Tool developers should ensure that their assessments are, empirically, just as accurate in classifying risk within each racial or ethnic group. They should focus especially on the racial composition of the high risk subgroup, recognizing that this subgroup is most likely to be incarcerated. If Black individuals are classified as high risk in substantially higher proportions than others, tool developers should consider adjusting their algorithms to avoid a disproportionate impact. In short, given legitimate, well-documented concerns in this area, explicit steps should be taken to mitigate racial bias.⁶⁴

Tools should also be validated separately for women and men, with risk formulas adjusted for women if necessary, given prior research that risk assessments developed with samples that consist mostly of men may not as accurately classify female defendants.⁶⁵

Consistent with national best practices, each of the following assessment tools should have five categories: minimal, low, moderate, moderate-high, and high risk.

- Risk of Re-Arrest: This tool would be calibrated to classify risk of any re-arrest.
- Risk of Violence: Especially regarding tough decisions over whether to release a defendant who is currently facing violent felony charges, it is important to have a finely calibrated tool to classify defendants based on risk of future violence.
- Risk of Domestic Violence: Research has shown that domestic violence defendants have specific risk factors—most importantly a prior history of domestic violence—that do not tend to be measured in other tools.⁶⁶ To draw reliable conclusions about this population’s future behavior, a specially calibrated tool is necessary.

9. New York City should have a robust pretrial services capacity.

The City’s current framework of pretrial services is a mosaic of various agencies and providers. Over the past four decades, the New York City Criminal Justice Agency has interviewed defendants prior to arraignment and assessed their likelihood of failing to appear for scheduled court dates.⁶⁷ Several different nonprofit service providers conduct pretrial assessments and provide supervision for those in supervised release, including CASES and the Center for Court Innovation, in addition to the New York City Criminal Justice Agency.

The Commission recommends that the City invest in a comprehensive pretrial services model, potentially increasing the resources of the Department of Probation and nonprofit providers. Pretrial services staff should be responsible for administering risk and ability-to-pay bail assessments; maintaining a presence in the courtroom to aid judges in making bail and release decisions; helping defendants pay bail as needed; and overseeing an expanded supervised release infrastructure. Under this system, many defendants will continue to be released on recognizance. For all defendants—those released on recognizance and those under supervision—pretrial services can assist with transport to and from court and court date reminders.

10. The current citywide supervised release program should be expanded and enhanced.

Some types of cases and defendants are currently ineligible for the City’s supervised release program. During pilot operations, these exclusions were understandable. Based on the program’s demonstrated early success, the Commission recommends expanding supervised release to include some defendants charged with domestic violence offenses, some who score as high risk on the risk assessment tool, and some charged with serious offenses.

Research demonstrates that treatment and interventions are effective at reducing recidivism among high-risk populations, including those charged with offenses involving violence.⁶⁸ Recent evaluations of New York State’s drug treatment courts,⁶⁹ and national research on the effects of cognitive-behavioral therapy⁷⁰ both point to especially large recidivism reductions with high-risk populations. Requiring these defendants to engage in treatment and services would help to address some of the problems that underlie their criminal justice involvement.

Even as we expand supervised release to this population, it is important to remember that all participants in pretrial programming are presumed innocent. Any effort to link a pretrial population to mandatory services must reckon with this reality. Nonetheless, numerous cities,

counties, and states across the country successfully release defendants who are high risk and charged with serious offenses and link them to services.

The Commission recommends an expanded range of pretrial supervision for these populations, which could include requiring treatment participation, electronic monitoring, or house arrest. Agencies such as the Department of Probation could help supervise high-risk individuals, given the extensive experience of the department in supervising defendants with a wide range of risk levels and needs.

High-risk defendants. Many charge-eligible misdemeanor and nonviolent felony defendants are excluded from the City's current supervised release program due to a high-risk classification on the City's risk assessment. The Commission recommends that these defendants be allowed into the program.

Domestic violence. The Commission recommends that judges be given the discretion to allow defendants charged with domestic violence offenses to participate in supervised release. Under the status quo, defendants who are held in pretrial detention for misdemeanor domestic violence only average 15 days in jail. Seen in this light, ordering domestic violence defendants to intensive pretrial supervision might afford a greater opportunity to monitor and detect order-of-protection violations than the status quo, where many domestic violence defendants make bail after a short stay in jail and then experience no supervision at all—potentially increasing the threat to victim safety. Allowing for some defendants to be released and engaged in treatment and programming, such as Moral Reconnection Therapy and other modalities tailored toward addressing intimate partner violence,⁷¹ may be more beneficial to victims and more productive to defendants than jail.⁷² Supervised release providers can also monitor and detect violations of existing orders of protection and stay-away orders.

Recognizing that supervised release for domestic violence populations is a relatively new concept, we propose common sense limitations on eligibility, such as ruling out those who pose a high risk of future domestic violence based on a validated assessment. We also propose that policies and practices designed to provide pretrial supervision to domestic violence defendants be designed in collaboration with the City's victim advocacy community.

Serious cases. A wide array of offenses are currently classified as "violent," ranging from homicide and rape to injuring someone while trying to grab their cell phone. Of those currently held in jail pretrial on violent felony charges, one-third (34 percent) are youth ages 16 to 24. Of these youth, almost half (49 percent) are held on first or second degree assault, burglary, or robbery charges. Many of the assault charges do not involve a deadly weapon, and in many of the robbery or burglary cases the young person was acting as an accessory or accomplice. We believe that many of these young defendants merit a second chance. The Commission recommends that at least some youth facing violent felony charges should be able to enroll in intensive supervised release. Specific eligibility could be limited by charge and risk. In the more distant future, if supervised release with carefully selected 16-to-24-year-olds facing violent charges proves effective, supervised release could be expanded to older defendants with similar charges.

In general, for cases in which the defendant is not released on recognizance, misdemeanors and nonviolent felonies should be assigned to supervised release, with the specific intensity of supervision determined by pretrial services staff based on the specific risk level. Violent felony defendants and defendants charged with domestic violence offenses should be handled more vigilantly, but with expanded opportunities for some defendants to participate in more intensive supervised release.

Penalties for non-compliance, such as failure to appear in court or to complete a condition of release, should be graduated and proportionate. Across all charge categories, first-time failures to appear in which the defendant returns to court within a reasonable period of time (e.g., 30 days) might result in greater conditions of release, but should not automatically elicit a quick resort to traditional bail or detention.

11. Paperwork and logistics related to alternative forms of bail should be streamlined.

Presently, for an arraignment judge to grant a secured, partially secured, or unsecured bond requires completing three separate forms: a bail bond form, justifying affidavit, and undertaking to answer. Each form elicits different information, yet some of the same items are required on all three. The defense attorney and court clerk typically require 10 to 15 minutes to work with those posting bail to get the paperwork completed—a long period of time in arraignment courts that must process cases rapidly.

To increase the use of these forms of bail, pretrial services staff should step in to assist with required paperwork whenever possible. The three required forms should be consolidated into one, with potentially different versions for each alternative form of bail. And, in cases where family or friends can make an unsecured or partially secured bond, but need additional time to gather the necessary paperwork and proof (e.g., pay stubs), an alternative form of bail should be set at arraignment, allowing for proof and payment of the deposit (if applicable) to be satisfied later.

12. All parties should facilitate rapid bail payment.

Prior to arraignment, system players—including the arresting officer, defense attorneys, and pretrial services staff—should assist individuals in recording the phone numbers of family or friends that could help with bail payment. The arresting officer should allow people to manually record phone numbers from their cell phones prior to vouchering. Where necessary, defense attorneys should proactively contact any identified friends or family members who have not been notified of the pending arraignment. Pretrial services staff should also help locate friends and family members if they learn that no one has been contacted. Signs should be posted in the holding cells to clearly communicate that efforts are underway to make contact with friends and family and to provide an overview of the bail payment process.

Building upon the efforts of the Mayor’s Office of Criminal Justice’s Bail Lab, automatic bail holds should be instituted for at least three hours in all cases, with a two-hour extension to five hours available upon request. Defendants should not be transported to jail if court staff are told that friends or family are in the process of securing bail fund support but need a little more time.

13. The Department of Correction should assist bail payment at intake.

At the outset of jail intake, Department of Correction staff should verify with the defendant whether friends and family have been notified of their detention. Correction staff should immediately reach out to make contact if the defendant requests it. In cases where friends or family inform correction staff of their intention to post bail shortly, staff members should pause the intake process and prepare the defendant for immediate release once bail is paid.

To be clear, we are proposing a fundamentally new role for correction officers stationed at intake—one in which their very first interaction with a defendant will consist of an effort to ask questions and offer help. Proceeding in this fashion can set the stage for a different type of relationship between correction officers and the people they supervise.

14. “Second look” procedures should be established to review whether bail was appropriately set at arraignment.

As part of its standard intake process, the Department of Correction performs a risk of readmission assessment. Based on this assessment, any individual in the lowest risk category who is eligible for supervised release and still detained several days following admission should be scheduled for an immediate bail review hearing.

Anyone still detained approximately three months after admission who has no record of disciplinary infractions on the current case should also be scheduled for an immediate bail review hearing—where the court should be apprised of the person’s positive behavior.

These proactive steps will enable the Department of Correction to bring to the judge’s attention useful information about risk, as well as about conduct inside the jail, that may constitute new evidence justifying supervised release in lieu of continued incarceration.

Finally, the courts should establish a policy requiring an automatic hearing on bail at the second court date for any misdemeanor or nonviolent felony defendant who was unable to post bail by that date and is technically eligible for supervised release. This measure builds on an existing bail review protocol for misdemeanors.

15. District Attorneys should examine prosecutorial strategies to mitigate racial and ethnic disparities.

Prosecutors are responsible for deciding charges, requesting bail, and extending plea offers. These decisions have enormous influence over the criminal justice process. Implicit bias may result in more punitive plea offers for Black and Latino felony defendants following indictment, as was demonstrated in a recent study.⁷³ The Commission recommends regular and ongoing training for implicit bias among prosecutors. Elected district attorneys should regularly review office practices and policies to identify potential racial and ethnic disparities. To mitigate disparities, prosecutors should explore the use of a structured decision-making tool which lays out the range of bail requests and typical offers (“going rates”) for different types of cases.

16. The processing of Desk Appearance Tickets should be expedited.

Under the status quo, if a defendant who receives a Desk Appearance Ticket appears in court on the scheduled arraignment date, the case will nearly always resolve without jail time. Warrants,

however, are issued for those who fail to appear. Once brought in, those individuals are then exposed to a real risk of jail time, even if the original offense was relatively minor.⁷⁴

To promote higher rates of appearance at the initially scheduled Desk Appearance Ticket arraignment date, appearances should be scheduled for no longer later than two weeks following the moment of arrests. Longer delays only serve to increase the likelihood that defendants will forget the date.⁷⁵ Courts should ensure that DAT defendants can have their cases heard after a minimal wait, ideally no more than two hours after walking into the courthouse.

Recommendations Requiring State Legislation

New York's bail statute, Criminal Procedure Law Articles 500-530, was enacted in 1970 with the express purpose of allowing judicial discretion and, when setting bail, providing a range of bail payment options that increase the chances of pretrial release.⁷⁶ When judges set bail, they must consider factors such as the defendant's character, financial circumstances, criminal record, and family ties.⁷⁷ But under New York law, judges are not currently allowed to consider a person's risk to public safety.

We join with other New Yorkers, including Mayor Bill de Blasio and Governor Andrew Cuomo, in voicing our support for reforming our bail law. We believe that money should not determine a person's liberty. The Commission endorses a system of pretrial justice that maximizes release. All but a small number of defendants can and should be safely released.

17. New York should eliminate money bail.

Given the unmistakable harms of traditional bail, there is a growing movement to eliminate money bail entirely. Washington, D.C. eliminated bail in the early 1990s. New Jersey recently enacted a similar approach. Each person arrested in New Jersey is assessed for risk for failure to appear, risk of re-arrest, and risk of violent re-arrest. Based on the results of all three assessments, a pretrial services agency makes a recommendation for release, supervised release, or preventive detention. The attorneys can also offer evidence to support an outcome that differs from the pretrial agency's recommendation, with the judge making the final determination.

The Commission believes that this is also the correct approach for New York—getting money out of the equation is the right thing to do. Any effort to eliminate money bail through state legislation must be mindful of the potential for unintended consequences. In particular, if bail reform efforts end up significantly increasing the use of preventive detention—defined as detention without chance of release on bail during the pretrial period—they will be a failure. Any acceptable legislative solution must contain sufficient and extensive safeguards to avoid this outcome. These should include stringent limitations establishing a small number of charges that can be subject to preventive detention and, as is the case in Washington, D.C., strict time limits on the duration of any detention during the pretrial period.

18. Pretrial decision-making should prioritize risk of future danger based on empirical information.

The pretrial decision to detain someone should be reserved for those individuals who pose an empirically-based, clear danger to an individual or to the community during the pretrial period.

New York's bail law should be amended to allow judges to consider an individual's potential risk of harming others, with the presumption that any risk of failure to appear can be addressed through appropriate pretrial supervision. Building upon the model used in Washington, D.C., discretion favoring release should be exercised in the majority of cases. For those whose alleged offense and future risk indicates that no amount of pretrial supervision or monitoring could adequately assure the safety of the community, there should be a very narrowly prescribed set of charges and circumstances in which pretrial detention is permissible. For that narrow set of people who are deemed too dangerous to release pretrial, due process, procedural safeguards, and a strictly enforced speedy trial clock are necessary to ensure that detention is used rarely and, where used, lasts for no more than a minimal period of time.

The assessment of risk should be conducted using actuarial risk instruments that are customized to be used on New York City's population to accurately predict whether defendants pose a low, moderate, or high risk of violence. As in New Jersey's new bail statute and consistent with the approach recommended recently by Governor Cuomo, absent a compelling justification, detention should only be permissible for high-risk individuals.

The Commission also recommends that risk tool developers test for whether their assessments could have a disproportionate impact on different racial or ethnic groups. (Safeguards regarding the construction of risk assessment tools were discussed previously, where we introduced our recommendations for using risk assessment within the existing statutory framework.) Under any legislative solution, it is especially important for risk assessment tools to be developed, validated, and assessed for disproportionate impact with great diligence and rigor.

19. Create a statutory presumption of release for misdemeanors and nonviolent felonies.

The Commission recommends a strong presumption of release for all misdemeanors and nonviolent felonies, which account for over 3,300 people who are currently detained on any given day. Broadly consistent with the approach in Washington, D.C. and New Jersey, these charges should be on the excluded list from preventive detention, absent a compelling justification that is proven in a special bail hearing. Defendants with these charges—as well as defendants facing violent charges but who do not have a statistically-demonstrable high risk of future violence—can and should be released during the pretrial period, in some cases under rigorous community supervision.

20. Current restrictions on bail funds should be relaxed and judges should be required to set at least three forms of bail.

Until cash bail is eliminated, some legislative reforms can help ease the payment of bail. Charitable bail funds step in to pay bail in misdemeanor cases where the amount is no more than \$2,000. The Commission supports a bill, A. 4880, currently pending in Albany to make bail fund assistance available at higher amounts of \$5,000 for both misdemeanors and felonies.

Furthermore, the law currently requires judges to set at least two forms of bail, which in practice are usually cash bail or an insurance company bail bond. Requiring that judges set a third form of bail would encourage greater use of credit cards and unsecured and partially secured bonds, reducing excessive upfront bail amounts and making it easier for people to pay bail.

3. Case Processing

Case processing delay in New York City is not a new problem. As far back as 1975, the state's Chief Administrative Judge, Richard J. Bartlett, reported, "The unhappy fact is that there is intolerable delay in the disposition of cases."⁷⁸ He established a new standard requiring felonies to be disposed within six months of an indictment. More than four decades later, this remains state court policy.⁷⁹

Upon assuming office just over a year ago in February 2016, the state's Chief Judge, Janet DiFiore, made improving case processing a focal point, establishing an Excellence Initiative in courts statewide.⁸⁰ According to Chief Judge DiFiore, "We do not accept delays and deficiencies in the courts as inevitable — not in the Bronx, not in Manhattan, not in Nassau, Suffolk, Erie, Monroe Counties or any other part of our state. Our first responsibility is to fix what's broken."⁸¹

To this end, the court system has focused on monitoring key benchmarks for the timely resolution of cases, examining the root causes of delay, and creating new strategies to move cases along. This has included establishing new dedicated court parts, overhauling case management processes, hiring additional staff, and creating new case management tools to measure court performance.

At her State of Our Judiciary address in February 2017, Chief Judge DiFiore highlighted some encouraging early results, particularly in New York City. For example, in the Bronx, the county with arguably the worst record of moving cases through the system quickly, the court system has moved aggressively to manage cases more efficiently and expand trial capacity. Criminal court judges are now asked to arrange their schedules so that they can conduct misdemeanor trials every Friday. The County's supervising judge personally presides over a court part dedicated to resolving the oldest pending cases. According to statistics reported by the court system, these changes have helped to increase the pace of misdemeanor dispositions in Bronx County markedly. As Chief Judge DiFiore reported, the total number of pending misdemeanors has been reduced by 32 percent in the Bronx. The court system is now taking elements that have been piloted in the Bronx and exporting them to other parts of the City; the court system reports a dramatic decrease in the oldest pending misdemeanor cases in the Manhattan Criminal Court as well.

The Commission applauds the strides that the courts have taken to date. The focus of the Commission is on accelerating these current positive trends and working with the court system and its partners to meet already established standards and goals, including that indicted felonies should be resolved within 180 days.

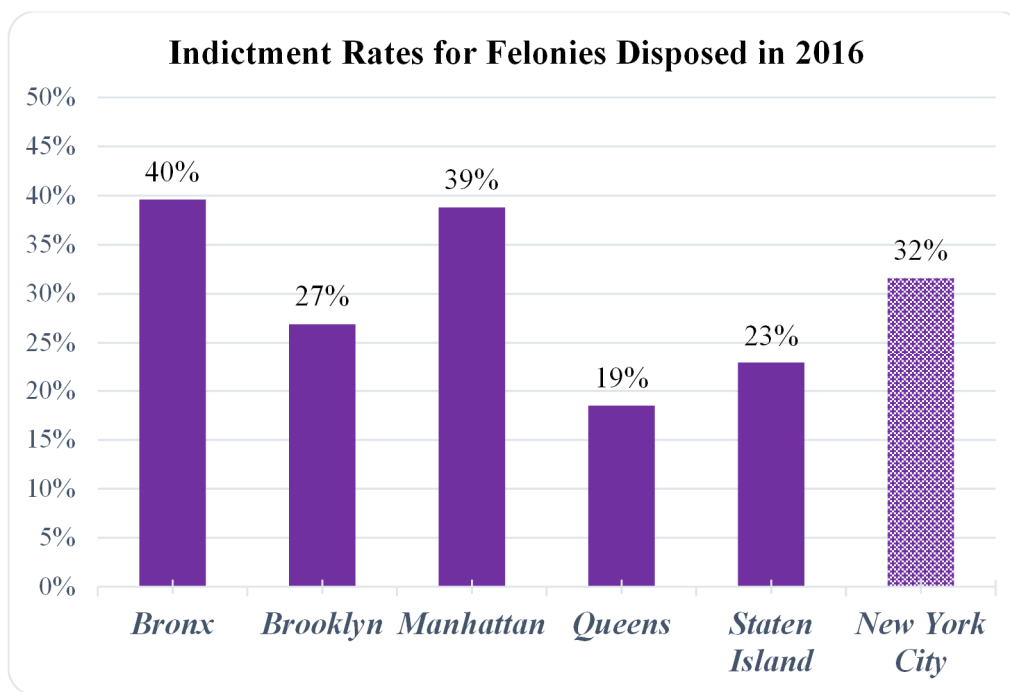
While the judiciary has to lead the way, all parties have a role to play in reducing case processing delay. The City of New York can improve the production of defendants for court appearances. Prosecutors can turn discovery information over to the defense soon after it is obtained and make better and earlier plea offers. And defense attorneys can cease to use delay as a tactic to obtain better plea deals.

In short, justice system leaders and practitioners can and should unite over the fundamental principle that justice delayed is justice denied. Assuming good (but not perfect) implementation, the recommendations in this chapter would yield an estimated reduction in the City’s jail population of 1,400 individuals, absent any other reform.⁸²

Current Performance

Research commissioned by the Mayor’s Office of Criminal Justice suggests that the average processing time for cases disposed in 2016 was almost three times longer for felonies than misdemeanors. Looking deeper into how felonies move through the system, after their arraignment in the lower Criminal Court, close to one-third (32 percent) are indicted and transferred up to the Supreme Court for adjudication. The remaining unindicted felonies are resolved through early plea agreements or dismissals.

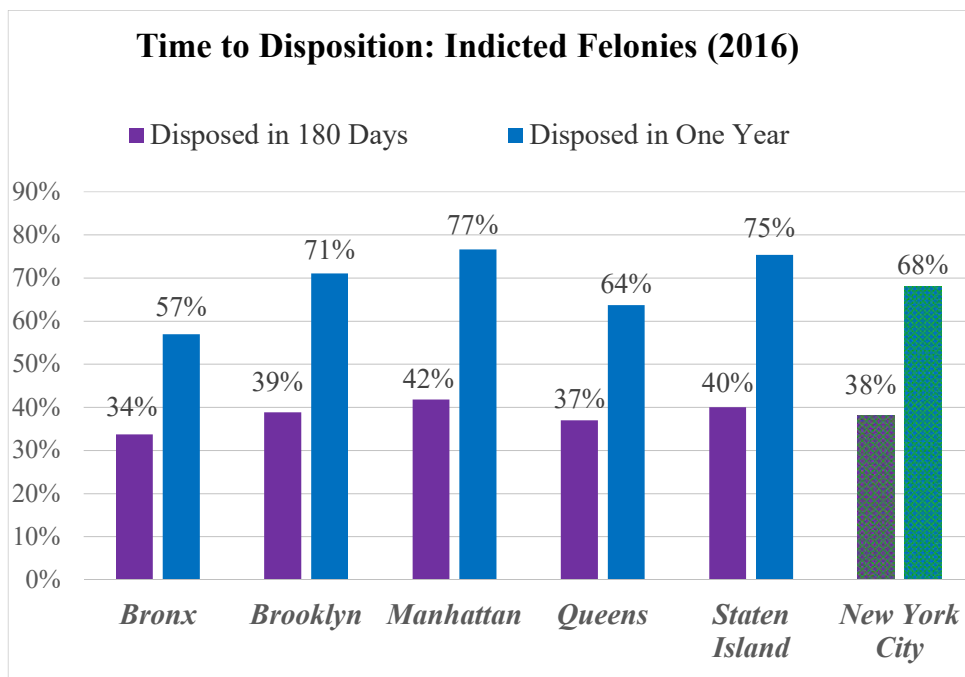
Indictment rates vary widely by borough—and are especially high in Manhattan and the Bronx—largely reflecting differences in the practices of each borough’s District Attorney.⁸³ The indictment rate is a key metric for case processing reform, because indicted felonies last an average 350 days from initial arraignment to disposition, which is 2.28 times longer than the average of 154 days for unindicted felonies.⁸⁴



The court system’s official 180-day standard for resolving felony cases refers specifically to processing time in the Supreme Court with indicted felonies only. Less than four in ten indicted felonies met this standard. Seven out of ten indicted felonies were disposed within a year. There were some differences from borough to borough; in the Bronx, only 57 percent of indicted felonies were disposed within this timeframe. All told, indicted felonies in New York City spent an average of 10.3 months pending in the Supreme Court until reaching a disposition. (There is some variation from borough to borough. The Bronx averaged 12.6 months, a more than a one-

month improvement from 2014 to 2016.) Across all boroughs, Supreme Court processing time barely varied based on whether or not the defendant was detained.

Indicted felonies pending a resolution in Supreme Court make up a significant share of the City's jail population. Of 9,753 individuals held in jail on September 29, 2016, nearly half (49 percent) were indicted felonies in the pretrial stages.



Misdemeanor cases tend to be resolved far more quickly than felonies, in large part because almost half of all misdemeanors are disposed right away at arraignment. Nine out of ten misdemeanors in 2016 were disposed within 180 days (88 percent).

Very few cases in New York City are resolved by trial. Of more than 250,000 criminal cases disposed in 2016, only 797 felonies and 529 misdemeanors were ultimately resolved by trial verdict. Our system is largely driven by guilty pleas and dismissals reached without a trial.

Nonetheless, the few cases that are decided at trial have sizable case processing ramifications. Indicted felonies decided at trial in 2016 averaged nearly two times longer to resolve than cases not decided at trial. The average processing time citywide was 20.8 months from initial arraignment to trial verdict, ranging from 16 months in Staten Island to well over two years in the Bronx. Misdemeanor cases with bench trials (where the parties agree to allow the judge to decide the verdict) averaged 450 days, or nearly 15 months, from arraignment to verdict. Misdemeanor jury trials averaged 616 days, or more than 20 months.

In general, case delays are the result of numerous factors, including:

Productive Court Appearances

All players have a role to play in ensuring productive court appearances. National best practices identified by the National Center for State Courts expressly link good case processing performance to deliberate efforts by judges to assure “meaningful court events,” including encouraging the parties to reach a plea agreement, setting a trial date due to the lack of an agreement, encouraging the parties to limit adjournment length, and reprimanding the prosecutor or defense attorney for a lack of preparation.⁸⁵

Discovery/Plea Bargaining

The Brooklyn District Attorney’s Office has adopted an “open file” or “discovery by stipulation” protocol under which they provide the defense with discovery material on an ongoing basis and consent to certain hearings without a formal defense motion. In a 2015 survey, defense attorneys cited delays resulting from the lack of open file discovery outside of Brooklyn, arguing that early plea offers cannot be properly assessed without seeing the prosecutor’s evidence. Prosecutors face some challenges in acquiring discovery information, including bottlenecks at the New York Police Department and the Office of the Chief Medical Examiner (although the Office of the Chief Medical Examiner has recently revamped its procedures).⁸⁶ After discovery is complete and prosecutors have presented a plea offer, delays are often a deliberate element of defense strategy; often defense attorneys decide that it is in their clients’ interests to wait for better offers, disappearing witnesses, or other favorable developments.⁸⁷ As several judges who testified before the Commission emphasized, a commitment to good faith early plea bargaining by all parties could help avert sizable delays later on.

Adjournment Length

In a 2015 survey of 677 judges, prosecutors, and defense attorneys, respondents pointed to adjournment length as the single reform area with the greatest potential to reduce felony case processing delays.⁸⁸ Research has documented that it takes an average of slightly more than 10 appearances in Supreme Court to resolve an indicted felony case – and that there is an average of 37 days between each Supreme Court adjournment. In effect, every unproductive court appearance—e.g., plea negotiations not held in advance, parties not ready, motions pending, discovery incomplete, psychiatric or DNA reports not arrived—tacks on more than a month before the next chance to resolve the case.

The Bronx

As the *New York Times* and others have documented, the Bronx has been the “epicenter for many of the worst delays and backlogs plaguing our justice system.”⁸⁹ Any effort to improve case processing must pay special attention to the Bronx. As detailed above, the New York court system is doing precisely this. Bronx District Attorney Darcel Clark has been an active partner in reform, initiating a plan for “vertical prosecution,” in which prosecutors are assigned to cases from beginning to end, replacing an old system in which prosecutors would frequently hand off cases to colleagues in mid-processing.

Speedy Trial Requirements

Section 30.30 of the New York State Criminal Procedure Law states that the prosecutor must be ready to hold most felony trials within six months, trials on “A” misdemeanors within 90 days, and trials on “B” misdemeanors within 60 days.⁹⁰ Failure to meet these speedy trial requirements

is supposed to trigger case dismissal. However, there are so many exceptions to the “30.30 clock” that the statute has been rendered largely meaningless. For example, prosecutors may state on the record in court that they are not ready for trial in court, but then file a “statement of readiness” days later, which effectively stops the speedy trial clock until the next court date.

Serious Charges

As one might expect, homicides require far more case processing time than other cases, averaging 21.5 months to disposition citywide in 2016. Sex offenses, including rape and sexual abuse, ran second with an average duration of 15.4 months.

Court Resources

New York City Criminal Court, which handles misdemeanors to disposition, as well as handling felonies prior to an indictment, has long been overburdened. While misdemeanor case volume has dropped since 2011, there is still a need for more resources, particularly non-judicial staff. Whether more Supreme Court justices are necessary to move cases more quickly is a different question. Felony caseloads have declined by 16 percent in the past five years, increasing excess capacity.

Recommendations

21. The New York court system should take the lead in driving cultural change, particularly with regard to cases involving pretrial detention.

New York State Chief Judge Janet DiFiore has indicated that she is ready to take up this challenge. According to DiFiore,

Everyone suffers when justice is delayed. Crime victims and their families, as they wait for justice to be done; prosecutors and their cases, as key witnesses move away, memories fade and evidence grows stale; and defendants, presumed innocent under the law, who must return to court over and over again or, too often, sit in jail waiting for their cases to be resolved.⁹¹

All players, not just the courts, should prioritize the speedy processing of cases involving detained defendants. The legal, ethical, socioeconomic, and psychological ramifications of case processing delays are greatest for defendants held in pretrial detention. We propose that all of the relevant criminal justice agencies prioritize the expeditious handling of these cases.

22. Compliance with standards and goals for resolving cases should be a priority.

The current problem is not the standards, but lack of compliance. The National Center for State Courts calls for resolving 75 percent of indicted felonies within 90 days, 90 percent within 180 days (New York’s official standard), and 98 percent within one year.⁹² We recommend aggressively monitoring compliance with all three of these benchmarks.

Given their complexity, we recommend establishing a more realistic 15-month standard and goal, technically 460 days, for indicted homicide and sex offense cases. For all cases, we also recommend discounting time when a defendant has absconded from court contact or when fitness to stand trial issues arise under Article 730.

Misdemeanors should be resolved within 90 days, with this standard achieved in 90 percent of cases.

23. “Best practice” calendar management strategies should be followed in the courts.

Drawing on research in ten states,⁹³ along with recent research in New York City,⁹⁴ we recommend broader and more aggressive use of the following practices, identified by the National Center for State Courts:

- Case Screening and Triage: Beginning as early as Supreme Court arraignment, judges should triage newly indicted cases, distinguishing those that are likely to go to trial, those that pose complex discovery issues, and those that may be appropriate for alternatives to incarceration. The least complex cases should be fast-tracked for rapid disposition. When cases are adjourned to a new judge in mid-processing, the new judge should initiate a similar review out of court, prior to hearing the case for the first time.
- Timeline Management: Working with attorneys, judges should move aggressively to set reasonable due dates for key events, such as completing motions and discovery, receiving third party exam reports, finalizing plea negotiations, securing expert witnesses, and scheduling trials. According to the National Center for State Courts, “Empirical evidence from courts around the country supports the proposition that the achievement of prompt and affordable justice in criminal cases is promoted by early court involvement and control of case progress.”⁹⁵
- Standards and Goals Tracking: Since felonies should be resolved within 180 days, judges should seek to track the cases on their pretrial calendar in order to become promptly aware when cases are lingering close to the 180-day mark. To aid judges, the court system has created new case management tools, including dashboards that enable administrators to review a court’s caseload by judge, case type, and age of case. In short, judges and administrators should actively manage and control their dockets – and measure the impact.
- Conferencing: A particularly useful tool is to conference cases in between appearances to discuss potential plea offers and determine if the case is headed for trial. In Brooklyn, the Administrative Judge in Supreme Court has assigned a court attorney to begin regularly conferencing cases out of court in order to probe the viability of an expedited plea agreement. When an agreement cannot be forged, the Administrative Judge then takes proactive steps to set prompt trial dates.
- Second Calls: For cases that are close to reaching a plea agreement, or have minor discovery issues that are resolvable on the same day, judges should hold “second calls”—i.e., another court appearance later on the same day after giving the attorneys time to meet out of court in the interim. In these cases, the attorneys should be expected to return prepared. Judges should make liberal use of “second calls” whenever same-day progress is possible.

- **Firm Trial Dates:** To the extent possible, judges should set firm target trial dates. Court administrators can help by encouraging judges to schedule and hold trials in prompt succession. For example, the Brooklyn Supreme Court recently instituted an expectation that all trial judges hold at least one trial per month.
- **Attorney Accountability:** Attorneys should be held accountable for moving cases. Judges can remind attorneys of their duty to achieve speedy justice. This includes urging prosecutors to take a realistic look at their cases and the kinds of outcomes that are likely; having court clerks call defense attorneys who have not arrived in court on time; and taking a hard look at scheduling delays requested by defense attorneys.

It is imperative to provide training and technical assistance to support judges in implementing these kinds of changes.

24. Adjournments should not exceed 30 days.

Each adjournment should have a purpose, and attorneys should be held accountable for completing between-appearance tasks. There is an inherent tension between completing tasks in between appearances and limiting the length of adjournments; judges, attorneys, and administrators do need time to get essential tasks done. Judges exercise discretion over the lengths of adjournments. Recognizing this, the Office of Court Administration has strongly encouraged a 30-day adjournment cap for the Supreme Court.⁹⁶ Research suggests that all boroughs have demonstrably improved since the summer of 2016, yet, as of February 2017, more than half of Supreme Court adjournments citywide continue to exceed 30 days.⁹⁷

In general, all adjournments should be set for the soonest date possible to complete between-appearance tasks, with 30 days best understood as an upper limit.

Adjournments at both the beginning and end of Supreme Court proceedings, respectively right after the indictment and just prior to sentencing, should not exceed 14 days. Demonstrating that change is possible, the Brooklyn Supreme Court saw a 307 percent improvement in meeting the first of these two milestones when comparing February 2016 to February 2017.⁹⁸

25. Statutory guidelines should support speedy case processing.

New York's speedy trial law has not proven effective in moving cases quickly to trial and resolution. In particular, there are too many exceptions to the speedy trial clock for prosecutors. The Commission recommends the passage of Kalief's Law, a bill with bipartisan support in the New York State Assembly and Senate. One critical feature of the bill would require the prosecution, when it claims to be ready for trial, to also state that it has complied with its discovery obligations.⁹⁹

Westchester County: A Model of Early Case Resolutions

A particularly effective way of avoiding delays in felony cases is to resolve them through good faith plea bargaining at the outset of case processing. Westchester County has adopted precisely such an approach. The parties, including the courts, defense bar, and Westchester County District Attorney's Office, work diligently to reach plea agreements soon after arraignment. As a result, very few felony cases in Westchester County are indicted. Many cases are resolved through a Superior Court Information, a felony plea agreement reached with the defense that allows for an early case resolution without an indictment. Among those cases that are indicted in Westchester, the average Supreme Court processing time was 134 days, and 82 percent of the cases were resolved within 180 days.¹⁰⁰ Comparisons of Westchester to New York City should be interpreted with caution, given differences in size and caseload. Still, it is worth looking at the results in Westchester and other parts of the State to see if there are valid lessons that can be applied in the City.

26. Open file discovery and other policies should be implemented to promote earlier case dispositions.

Wherever possible, case resolutions prior to indictment should be encouraged through early discovery and good faith plea negotiations. District Attorneys and the defense bar should consider these steps:

- Open File Discovery: Modeled after existing protocols in Brooklyn, District Attorneys and the defense bar should consider “open file” or “discovery by stipulation” protocols in more cases. Ideally, District Attorneys would provide a packet of available discovery to the defense bar as early as the Criminal Court arraignment. Appropriate exceptions could be carved out, where the safety of witnesses might be compromised by premature discovery.
- Aiding Prosecutors: New policies should be instituted to help prosecutors obtain evidence. For example, District Attorneys' offices currently obtain information from the New York Police Department by going in-person to the arresting police precinct. The DAs' offices and NYPD should collaborate on an electronic transfer protocol as well as improving transfers of non-electronic information.
- Prosecutorial Plea Policy: To ensure that plea bargaining remains viable throughout the discovery period, prosecutors should leave their “best offer” on the table until at least one month after discovery is complete. Sometimes, prosecutors end up making better plea offers as cases get closer to trial. This practice may have the unintended effect of encouraging delay by defense attorneys.
- Defense Policy: Defense attorneys should seek to reduce delays in scheduling conferences or next court appearances, especially when discovery is complete and a reasonable offer is on the table.

While not a panacea, early discovery and good faith plea bargaining could increase early felony dismissals and charge reductions by helping all parties quickly realize when the evidence is weak. As has been the case in Westchester County, early discovery and plea bargaining could also promote early felony Superior Court Information outcomes (essentially, pre-indictment felony plea agreements) when all parties realize that the evidence is strong. In both of these examples, the result would be fewer indictments and speedier processing.

27. The Bronx should continue to be the focus of reform efforts.

For years, the Bronx Supreme Court has performed worse than other boroughs on nearly all case processing metrics for indicted felonies. A no-blame policy looking backwards should be paired with a no-excuses policy looking forwards. There are some results to suggest that progress has been made in the Bronx in the past year. Reforms advanced by the court system, the Bronx District Attorney's Office, and the Mayor's Office of Criminal Justice should be continued and strengthened. These efforts should be augmented by frequent and candid reporting to the public.

28. An interdisciplinary taskforce should identify strategies for reducing homicide case processing time.

The Commission recommends establishing an interagency taskforce to devise strategies for reducing homicide processing times. As a starting point, the taskforce could explore why performance diverges across the five boroughs, looking at what strategies are working (or not) in each borough. Another avenue of inquiry could be availability of attorneys. The taskforce could make recommendations for study or pilot projects, with a particular focus in those boroughs (Queens and the Bronx) where homicide processing times are the longest.

29. In misdemeanor cases, strategies should be adopted to increase dispositions at arraignment.

Almost half of all misdemeanors (47 percent) are already disposed at arraignment. Nonetheless, it may be possible to build on this strength of the system, for instance by making brief alternative-to-incarceration options more widely available at arraignment. Since Staten Island's 2016 disposition-at-arraignment rate for misdemeanors was only 31 percent, it may offer a particularly ripe setting for creative new sentencing options.

30. The court system should make a commitment to procedural justice.

A trip to a criminal court in New York City can be bewildering, whether you are a defendant, a victim, a witness or a juror. Long lines at security. Overcrowded elevators. A dearth of directional markers. Officiously worded signs about court rules. Long waits. Court appearances lasting just a few minutes and including incomprehensible jargon. Beyond efforts to produce quantifiable reductions in case processing delay, procedural justice reforms in courthouse signage, holding cells, arraignment proceedings, court process explanations, and assistance to victims could go a long way in altering perceptions of the criminal justice system.

4. Sentencing Reforms

On any given day, there are close to 1,300 people serving jail sentences on Rikers Island. Most of these sentences are exceedingly brief—more than two-thirds involve 30 days or less of jail time. Others spend long periods of time in pretrial detention on serious charges and then are

released after pleading guilty to time served or an equivalent plea because they have already spent upwards of a year or more in jail awaiting resolution of their case.

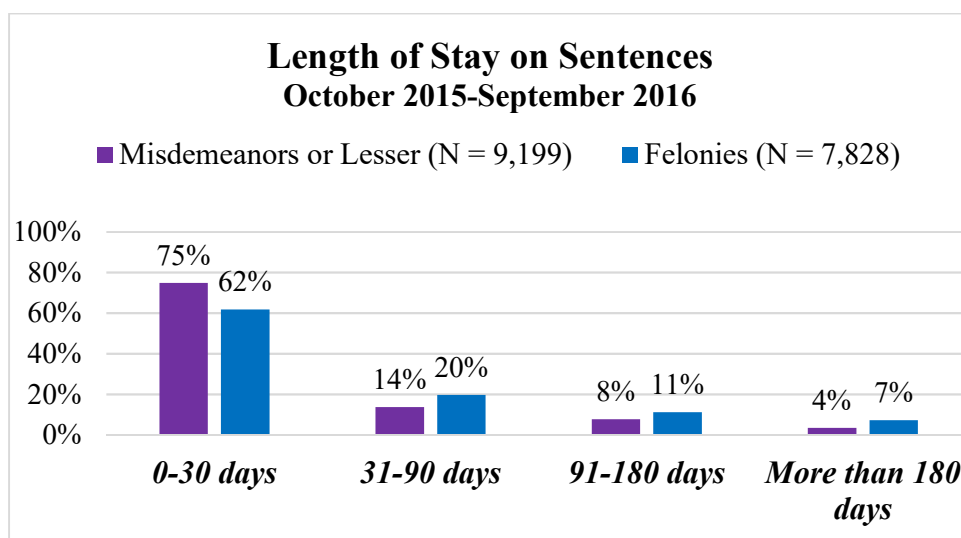
To be clear, there are cases in which no other sentence but incarceration is appropriate. But this is not true in most cases. On the low end, the Commission believes that extremely short jail sentences of 30 days or less represent a wasted opportunity to address the underlying issues that lead to criminal justice involvement. The Commission also recommends that some cases that currently receive longer jail sentences can be replaced with a community-based sanction that reflects accountability and promotes rehabilitation. In the words of one person who shared their views on the Commission's website, "jails may offer temporary reprieve from whatever burdens some people are creating for the community, but if we are not actually addressing the problems they have, they will just return from jail doing the same thing."

We recommend replacing incarceration in as many cases as possible with evidence-based alternatives that hold people accountable for their behavior and promote rehabilitation. The recommendations in this section could reduce the daily jail population by close to 600 individuals, added to the jail reductions reported in previous sections.

Current Practice

More than half of all jail sentences involve misdemeanors. Most of these misdemeanor jail sentences are for petty theft (19 percent), possession of a small amount of drugs (17 percent), disorderly conduct (12 percent), and domestic violence (10 percent).

When an individual is convicted of a misdemeanor and serves time in jail, 75 percent of the jail stays are 30 days or less. Less 8 percent of jail sentences for either misdemeanor or felony convictions involve stays of more than 180 days.



A growing body of research suggests that short-term incarceration may actually increase the likelihood of future criminal justice involvement, especially for individuals who pose a low risk

of re-arrest.¹⁰¹ Accordingly, reducing the use of short jail sentences can be an effective, even an essential, public safety strategy.

New York City already has a diverse array of alternatives to incarceration to build upon. Non-profit providers like CASES, Center for Community Alternatives, Center for Court Innovation, Center for Employment Opportunities, Education & Assistance Corporation, Fortune Society, Osborne Association, STEPS to End Family Violence, and the Women's Prison Association, among others, provide meaningful alternatives to incarceration to thousands of New Yorkers each year. The New York City Department of Probation supervises 22,000 individuals at any given time. And the New York State court system has created a broad range of problem-solving courts including the Red Hook Community Justice Center and the Midtown Community Court, the Brooklyn Mental Health Court, and drug treatment courts. Very few, if any, other cities can boast of resources like these.

Given this strong foundation, the Commission believes that New York City has an opportunity to implement a comprehensive, evidence-based strategy for deciding who is safe and appropriate for a community-based sentence. We endorse an individualized approach to sentencing that emphasizes accountability and rehabilitation.

Recommendations

31. A centralized alternative-to-incarceration office should be created within each borough's criminal courthouse.

The City's network of community-based alternatives is an integral part of the success the City has had in reducing the numbers of New Yorkers sent to jail and prison over the past two decades. The challenge going forward will be to expand enrollment in these programs. Presently, each alternative-to-incarceration agency has its own representatives in the courthouse, often scrambling to get new referrals and to intake new cases.

The Commission recommends establishing a centralized office in each borough in order to expedite and systematize the assessment of defendants and the coordination of services. This is already effectively in place in the Bronx Criminal Court, where Bronx Community Solutions offers screening and services to thousands of defendants each year. In creating similar capacity in each criminal court, the goal would be to provide brief social services onsite and to refer defendants to community-based providers for longer-term treatment.

Prior to implementing the new system, a cross-agency working group composed of representatives from the current alternative-to-incarceration service providers in New York City should provide input and recommendations.

32. The City should invest in expanding the availability of treatment for underserved populations and underserved problems. Longer jail stays should also be reduced through greater use of evidence-based alternatives.

In May 2016, the New York City ATI Coalition, a collaborative of ten nonprofit agencies that collectively serve thousands of New Yorkers in community-based supervision programs each year, released a blueprint for reforming alternatives to incarceration. In the blueprint, they

recognized that certain populations remained underserved, including women; young people; people who are LGBTQ; people with mental illnesses; people who suffer from an addiction and are convicted of property crimes; and people charged with serious or violent offenses. The Commission recommends expanding the availability of treatment for these populations, with a special focus on defendants with anti-social beliefs that are treatable through cognitive behavioral approaches. The Commission also supports the recommendation of the 2014 Mayor's Task Force on Behavioral Health and the Criminal Justice System to provide supportive housing for vulnerable, justice-involved individuals.

The Commission believes that it is possible to replace incarceration with a system of evidence-based alternatives in a broad range of cases, including serious offenses. A speaker at one Commission community roundtable shared her experience:

I'm a graduate from an ATI...I went to Common Justice in Brooklyn...I was able to stay away from Rikers and going upstate...what I learned within that ATI is what changed me as a person. It showed me that regardless of where I am, I could be a different person. I feel if they had more alternative-to-incarceration programs, there's a lot of other people that could get the same kind of help I got and just make a change."

33. New community justice centers should be established in neighborhoods with discrete crime problems and low levels of public trust in justice.

Several neighborhoods in New York City are home to neighborhood-based justice programs launched with the support of the New York State court system. These include Red Hook, Harlem, Midtown, and Brownsville. Each of these programs is unique, but they all share an emphasis of promoting the use of alternatives to incarceration and engaging local residents in improving local safety. The Red Hook Community Justice Center and the Midtown Community Court have both been documented to reduce the use of jail and to increase community confidence in justice.¹⁰²

The City should contemplate opening new community justice centers in neighborhoods that have high crime rates, low levels of confidence in justice, and local interest in establishing such a program. Based on these criteria, possible sites could include the South Bronx, Far Rockaway, East New York, and Staten Island. The Staten Island District Attorney, Michael E. McMahon, expressly urged the Commission to support community courts in the borough and signaled his readiness to serve as their champion.

Any new community courts should be planned in close collaboration with the community itself (including leaders, residents, former defendants and victims, and service providers). Eligible charges should reflect local crime problems as well as resident preferences. Services for victims should be included as well as programs for defendants.

34. The City should invest in gender-responsive interventions for women.

Justice-involved women are especially likely to suffer from prior abuse and trauma, which can precipitate other mental health problems and, in some cases, increase risk for substance abuse.¹⁰³ A recent publication commissioned by the New York Women's Foundation identified four examples of promising gender-responsive treatment curricula for women in the criminal justice

system, *Healing Trauma, Moving On: A Program for At-Risk Women, Helping Women Recovery: A Program for Treating Addiction*, and *Beyond Violence*. These programs range from five sessions to 20 sessions in length; all four programs are trauma-informed.¹⁰⁴ Employment programs for justice-involved women are also needed.

35. Jail stays of 30 days or less on nonviolent offenses should be effectively eliminated.

The vast majority of jail sentences in New York City, especially on misdemeanor convictions, are far too short to produce any incapacitation benefit but not too short to have lasting negative effects on defendants. In the words of Elizabeth Glazer, Director of the Mayor’s Office of Criminal Justice, using short jail sentences as a sanction for nonviolent, low-level criminal behavior is “meaningless.”

The Commission recommends that the New York Court System, the Mayor’s Office of Criminal Justice, the five elected District Attorneys, and the defense bar work together to develop a plan to ensure that this happens.

36. The Department of Probation’s capacity to supervise defendants in the community should be expanded.

In recent years, the Department of Probation has taken many innovative steps to make the sentence of probation a means to enact behavioral change and promote positive outcomes. For example, beginning in 2012, the Department began administering a validated risk and needs assessment to all probationers at intake and, based on the results, assigning individuals to one of three carefully designed supervision tracks. The Department also recently launched community-based probation centers, called the Neighborhood Opportunity Network (NeON), to improve service delivery. The Commission believes there is an opportunity to expand the role of the Department of Probation to provide community-based sentences for more serious cases and higher-risk individuals. Based on a thorough risk and needs assessment, the Department of Probation could place participating defendants in a program that uses electronic technology and frequent reporting to ensure compliance, safety, and positive growth. In short, Probation could provide meaningful alternatives for many individuals serving a long jail sentence in our current system.

37. Alternatives to incarceration should be expanded for youth ages 16 to 24, including those facing serious charges.

Greater alternatives are needed at the sentencing stage to give youth a second chance. As Brooklyn has already done, all five boroughs should expand participation in the existing Adolescent Diversion Program from ages 16 and 17 through age 24 and should extend eligibility to youth facing both misdemeanor and nonviolent felony charges, as well as carefully selected youth facing violent charges. Promising programs such as Common Justice, which serves youth ages 16-24 years old charged with violent felony offenses including robbery and assault through restorative justice principles, should also be expanded citywide.

38. New York State should reform “good time” credit on city jail sentences.

By statute, people sentenced to jail at Rikers Island currently serve two-thirds of their sentence. The Penal Law should be amended to allow inmates to earn additional “good time” credit, making possible a standard time served of one-half instead of two-thirds. This change would

promote positive engagement for those in jail and provide an incentive to participate in available services. Currently, release after serving two-thirds of your sentence is virtually automatic. We believe people should earn half-time off their sentence through good behavior.

39. New York State should raise the age of criminal responsibility from 16 to 18 years.

New York and North Carolina are the only states in the country that automatically prosecute 16- and 17-year-olds as adults. Research shows that adolescents are especially likely to age out of delinquent or unlawful behavior when they are allowed to remain engaged with family, school, and work.¹⁰⁵ Time spent in an adult jail or prison can slow or interrupt the natural “aging out” process, and adolescents prosecuted in the adult criminal justice system are 34 percent more likely to be re-arrested than those whose cases are removed to family court.¹⁰⁶ Youth charged with a crime should be treated as the young people they are. The Commission recommends raising the age of adult criminal responsibility in New York to age 18.

40. At sentencing, the courts should take into account any actions of the defendant that demonstrate positive steps to change behavior.

Beyond the current charge, the defendant’s prior criminal history, and the prosecutor’s sentencing recommendation, other factors that should be considered at sentencing include underlying circumstances (prior history of drug addiction, childhood or adult victimization, trauma, or other mental health problems) and recent steps to seek or participate in treatment. Prosecutors should be encouraged, and given discretion, to calculate these factors when making a plea offer. Judges should be given the discretion to consider these same factors when imposing a sentence. And the defense bar should be given the resources necessary to gather detailed mitigation information about their clients to present to the prosecutor and the court.

41. New York State should revamp its sentencing laws to restore discretion to judges and make all prison sentences determinate—i.e., with a clear end date from the outset.

Judges are currently required by law to impose a state prison sentence in a wide array of cases involving a felony conviction. For example, except for drug felonies,¹⁰⁷ judges’ hands are tied in nonviolent felony cases where the defendant has a prior felony conviction at any time in the past ten years. In these cases, a prison sentence is required regardless of the judge’s appraisal of the facts of the case or circumstances of the defendant. Similarly, all convictions on Class B and Class C violent felonies, including robbery in the second degree, must result in prison time. The Commission recommends that sentencing minimums be removed from the law so that judges have discretion, in appropriate cases, to impose a lesser sentence than required by law currently.

For those who are sentenced to prison, the length of the sentence should be crystal clear from the outset. A determinate sentencing scheme for all sentences would mean that all prison sentences have a clear start and end date and no discretion is left to the Parole Board to determine early release. The New York State Permanent Commission on Sentencing endorsed a move to a determinate sentencing structure; this Commission also supports that approach.¹⁰⁸

42. A task force devoted to jail reduction should be established.

We propose the establishment of a multi-disciplinary task force that would bring together representatives from relevant City and State criminal justice agencies, local criminal justice nonprofits, and communities that are most profoundly affected by crime and incarceration in the

City to help guide and monitor jail reduction efforts. The task force should conduct formal, COMPSTAT-like reviews of performance data, analyzing the progress that the City is making towards reducing the use of jail. The task force should also examine efforts to reduce racial and ethnic disparities at each stage of the criminal justice process. And the task force should regularly publish the results of its findings on a public website.

43. New policies and programs should be evaluated.

We believe that New York City can achieve significant jail reductions without compromising public safety. This conclusion should be subject to scrupulous verification. High-quality, independent evaluations should be conducted to examine the outcomes of all new diversion, bail, case processing, and sentencing strategies. All evaluation reports should be made public on a timely basis.

Researchers should look at more than just statistics. They should also seek to solicit perceptions of several key constituencies through repeated-measures surveys, focus groups, and other forums. For example, going forward researchers should conduct a representative phone survey of the City's residents, testing confidence in justice, support for law-abiding behavior, and attitudes towards various criminal justice agencies, such as the police department, prosecutors, public defenders, and the courts. Researchers should also document the experiences, attitudes, and perceptions of people held in jail and the City's correction officers.

The Future of Jails

Reducing the City’s jail population by half, as detailed above, creates a unique opportunity for New York City to realize a new vision for its jail system. The Commission believes that the use of Rikers Island must be phased out over the next ten years and its facilities demolished. Given Rikers’ remote location and history – and the persistent culture of violence and loss of humanity inherent to a penal colony – rebuilding on the Island is not an option. The foundation for a new, more efficient, effective and humane system begins with building a smaller, borough-based jail system to replace the isolated, crumbling, and violence-plagued jails on Rikers Island. Our goal is to provide a safe and healthy environment for those detained as well as those who work in our jails. We want to end the “out of sight, out of mind” approach to corrections by developing facilities that are more accessible to families, employees, service providers, and criminal justice agencies.

Building an entirely new correctional system may sound daunting, but the costs of staying on Rikers Island are far steeper in the long run. The jails on Rikers Island are poorly designed, old, and most have long passed the end of their useful life. The design and deterioration of the jails create dangers for everyone on the Island. The fiscal costs of maintaining operations in these facilities, both on and off the Island, are staggering – more than \$650 per detainee per day – and far greater than any other comparable jail system in the country. The Commission’s vision for a new system would save the City over a billion dollars a year. And the Island’s redevelopment would make a significant contribution to the City’s economy to the benefit of all New Yorkers.

At least as important as any of the preceding considerations, closing Rikers Island affirms our values as New Yorkers – we believe in a system that is fair, effective, humane, and just.

The Commission recommends building facilities in each of the five boroughs, creating a system capacity of 5,500 beds. These facilities would be located in city centers near or adjacent to courthouses and in close proximity to public transportation. The new facilities would replace existing, dilapidated facilities in Brooklyn, Queens, and Manhattan, while City-owned land should be identified for new facilities in the Bronx and Staten Island.

In spelling out our vision on the pages that follow, we seek to answer four questions in particular:

1. What is wrong with the jail facilities on Rikers Island?
2. What should the jails of tomorrow look like?
3. What are the cost implications of moving away from a penal colony to a smaller, borough-based jail system?
4. Where should borough-based jails be located and how can the site selection process be both fair and responsive to community concerns?

1. The Problems with Rikers Island

There are many problems with the jail facilities on Rikers Island, but three in particular stand out as obstacles to a truly modern correctional system: the deterioration of the physical plant, the isolated nature of the Island itself, and the barriers that are placed in the way of service providers, family members, and others attempting to forge meaningful connections with those behind bars.

Governor Cuomo on Rikers Island

In recent months, Governor Andrew Cuomo has been a consistent voice arguing for change on Rikers Island. According to Governor Cuomo, “Rikers Island is one of those long-term injustices and abuses that every New Yorker should be outraged about — every New Yorker.” Among other things, Governor Cuomo has said the design of the complex is outdated and unsafe. He has also argued that Rikers should be replaced with a smaller facility.

Rikers Island is Deteriorating

All buildings begin to deteriorate at some point. When jail facilities begin to deteriorate, the impacts are significant, increasing the risk of escape and violence.¹⁰⁹

The first correction facilities on Rikers Island were built in the 1930s. Some of the original facilities remain in use today.¹¹⁰ Of the facilities currently being used on Rikers Island, the average age is 43 years old and only two were built as recently the 1990s, both coming online in 1991.

Facility (Rikers)	Year Built ¹¹¹	Current Age	Bed Capacity ¹¹²
AMKC	1977	40	2,846
RNDC	1972	45	2,202
EMTC	1965	52	1,851
GMDC	1969	48	2,102
GRVC	1991	26	1,236
NIC	1935	82	455
OBCC	1985	32	1,721
RMSC	1988	29	1,591
West Facility	1991	26	0

The jails on Rikers Island are plagued with problems: rotting floorboards, malfunctioning heating and cooling systems, sewage backups, leaking roofs,¹¹³ broken showers, and flooded

bathrooms.¹¹⁴ A participant at our Bronx design workshops who was formerly held on Rikers explained, “My living situation was unfit for a human, so I began to act inhuman, and was treated that way too.”¹¹⁵ This is a common reaction – as Mary Lynne Werlwas of the Legal Aid Society noted, “There is an inexorable link between [jail] conditions and the violence that occurs within jails. The conditions send the message to those detained and the workforce that ordinary rules of decency don’t apply.”¹¹⁶

The physical plant on Rikers Island makes everybody’s life miserable – detainees and staff alike. It also undermines safety. Detainees have been able to pop open their cells because the locks do not work properly. Roof leaks have caused malfunctions to the system used to lock cell doors.¹¹⁷ And there have been numerous examples of detainees fashioning weapons from broken equipment.¹¹⁸ Indeed, a 2014 review revealed that “the overwhelming majority of weapons found in the jails are improvised from materials already inside.”¹¹⁹ The poor condition of the facilities provides detainees with a veritable arsenal: plastic torn from light fixtures, metal from radiators,¹²⁰ and even sprinkler heads offer raw material for weapons.¹²¹ As the Board of Correction concluded, to stem the tide of violence, the “DOC must do more to address the jails’ deteriorating physical environments.”¹²²

According to Commissioner Joseph Ponte, Rikers’ outdated buildings have fundamental design problems that limit the ability of the Department to make improvements.¹²³ The design of the jail facilities on Rikers – with cells arranged along long corridors, connecting to day rooms and program spaces at right angles – mean that staff come into contact with the incarcerated population only at irregular intervals, and often around corners. It is difficult for staff to detect tensions in the population until after conflicts have begun. Often, additional help can only be summoned after the fact.¹²⁴ At one of the Commission’s community roundtable events, a panelist remarked, “In Rikers you have staff getting to the scene of an incident not to prevent or stop what’s about to go down, but to clean up the mess.”

As architect and national jail expert Ken Ricci told the Commission, “jails as we know them are obsolete—they are based on outmoded ideas and are not suitable to current challenges. Jails were originally meant for short-term detention, but now all of society’s problems show up at the front door of the jail, and the jails are not suited to handle it.”

The outmoded nature of the facilities on Rikers also interferes with therapeutic programming and medical care. Detainees must be transported down long corridors to get to housing and programming, recreation, healthcare, or visitation areas. Ronald Day of the Fortune Society told the Commission, “the way the facilities are currently structured requires a significant amount of time to get people to visits, which are the very things that make people remember they are human.”¹²⁵ Depending on security classifications, certain populations are not authorized to pass each other in the hallways, which can lead to transport backups and significant delays.¹²⁶ This is one reason why detainees often arrive late (or not at all) to programs or appointments, making it difficult for program providers to operate effectively.¹²⁷

More fundamentally, the buildings on Rikers Island do not have enough private, safe spaces to provide detainees with effective on-site programming.¹²⁸ This is particularly true for mental health care.¹²⁹ Many therapeutic groups on Rikers take place in decidedly un-therapeutic settings

– in housing areas or day rooms where there is little privacy and a great deal of disruption and competition for detainees’ attention.

Rikers Island is an Isolated Penal Colony

Borough-based jails, located near courthouses, would significantly reduce the time and resources needed to ferry individuals to and from both the courts, lowering transportation costs, improving court production rates, and easing impact on detainees and staff.

Approximately 10 percent of the jail population, more than 1000 people, is transported off the Island each day for court appearances and other appointments across the five boroughs. This is a significant burden for all concerned. Tina Luongo, of the Legal Aid Society, testified before the Commission:

If you want to exercise your right to trial, then every single morning you have to get up at 3 AM to get to court (with no breakfast). In one case, if Legal Aid needed to talk to a person or prep him because he needed to testify, he had to stay late and get on the late bus back to Rikers, only to get back up again at 3 AM. This is why people plea out. They had to beg correction officers to feed him breakfast because he was starving.

Considering the difficulty of getting around New York City, the Department of Correction does a decent job of transporting detainees. But the sheer volume of people needing to be ferried means that inevitably mistakes happen. The FY 2016 Mayor’s Management Report revealed that the Department successfully produced detainees to court only 84 percent of the time. This has a significant impact not only on the lives of detainees and their families but on the efficiency of the justice system – the failure to produce detainees for court contributes to the problem of court delay.¹³⁰ Towards the end of FY 2016, the Department made court production a priority. In the first quarter of FY 2017, they were able to raise court production to 98 percent.¹³¹ While this is a significant achievement, court production remains a significant drain on departmental resources.

The isolation of the Island also has the unintended consequence of leading to unnecessary and meaningless incarceration. Forty percent of defendants with bail set are able to pay it and be released. However, three-quarters of those making bail are not able to pay until after they have been transported to Rikers. Many end up being held in jail for up to a week only because their family or friends do not have adequate time to make it to the courthouse and pay the required bail before the bus to Rikers departs.¹³² If the family is not able to post bail at the court, they must go to a Department of Correction facility to post bail. This is no simple matter. Researchers from the Center for Court Innovation have documented the difficulties of posting bail at these facilities.¹³³ Borough-based facilities would make it easier for families to post bail, potentially shaving hours, even days, off the current process.

Rikers’ isolation also hinders the effectiveness of defense attorneys. Currently, defense attorneys who need to meet with a client on Rikers must spend a full day out of the office and away from court. This barrier can inhibit attorney-client communication and complicate efforts to provide effective advocacy.

Defense attorneys are hardly the only service providers affected by Rikers' isolation. For a variety of reasons, it is often necessary to provide detainees with treatment off the Island. Unfortunately, these mental health appointments are often not kept. According to the Board of Correction, which only recently began compiling data, detainees missed 9,127 appointments in April 2016; 9,524 in May 2016; 10,325 in June 2016; and 10,770 in July 2016.¹³⁴

Rikers Island also creates significant barriers for social service providers, who must travel great distances to get to the Island. Borough-based facilities would enable these providers to increase programming opportunities, facilitating successful reentry for those leaving detention and returning to community life.

As painful as it is for service providers to navigate travel to Rikers Island, it is worse for the family members of detainees. We know that regular contact with loved ones during a person's time in jail can improve outcomes.¹³⁵ It is difficult to achieve this kind of contact for many detainees at Rikers Island. For women and young people held on Rikers, this reality is particularly troubling.

As Ashley Viruet, of the grassroots organization West Side Commons, highlighted at a community roundtable, incarcerated women are often the primary caregiver for their children, making community-based facilities all the more important: "To take that mother and caregiver away, and then also to need the grandmother or aunt or whoever is taking care of the kids to bring them Rikers Island is very difficult. Having something closer would keep that bond."¹³⁶ Angela Mamelka of Greenhope Services for Women underscored the value of connecting young people to sources of support outside of Rikers: "It's very important for youth to be able to see their parents, to know that somebody is still there and that they haven't been forgotten while they're so far away from home."¹³⁷

The vast majority of those detained on Rikers Island will eventually return home to their communities. Fewer than 10 percent of those discharged will be sent to state prison.¹³⁸ As we heard from correctional administrators, a key challenge is how to facilitate successful transitions back to community life. Historically, detainees have either been released directly from court or brought from Rikers to Queens Plaza in the early hours of the morning and handed a MetroCard with instructions to find their way home.¹³⁹ People with certain mental health needs now have access to a more guided reentry process, but these services are voluntary and those without psychiatric issues often decline them.¹⁴⁰ When detainees are released from court, they do not get their belongings unless they return to Rikers at another point within 30 days to collect their property.

We can do better than this.

The Island's isolation limits reentry planning. A borough-based jail system, in contrast, would decrease travel time and expense, facilitating visits with detainees and enhancing the likelihood of successful reentry upon release. Chris Watler of the Center for Employment Opportunities, stressed the challenges of delivering reentry programming to an isolated location: "New York City used to have community-based jails, and it would be much easier to work with people if the men and women we serve were closer to the community."¹⁴¹

Over the past generation, many criminal justice agencies—including police, prosecutors, probation and the courts—have acknowledged the importance of forging stronger bonds with local residents and the difficulties that emerge when agencies are dislocated from communities. This is the idea behind community justice. In New York, this impulse has given rise to a broad range of innovative programs, including the Probation Department’s Neighborhood Opportunity Network (NeON) and local courthouses like the Red Hook Community Justice Center and the Midtown Community Court.

The idea of community justice has touched almost every part of the justice system in New York City, save for the Department of Correction. Would having jails based in the community strengthen the sense of mission among staff across the Department? Would it help forge stronger connections between New Yorkers and the Department? Would it improve the outcomes the Department achieves? We will never find the answers to these questions if we continue to operate a penal colony on the outskirts of town, far removed from New York City neighborhoods and their residents.

2. A New and Better Jail System

In speaking to the Commission, Reverend Al Sharpton stated that “[The United States hasn’t] really considered the model of incarceration in this county since the 19th century—we need to update what 21st century incarceration looks like.”¹⁴²

The Commission attempted to take up this challenge. We believe that building modern jail facilities in each of the boroughs would help create a safer, more humane, and more cost-efficient correctional system for New York.

One way or another, new jail facilities are essential if New York City hopes to have a modern correctional system that promotes the safety of detainees and officers. Rather than building on Rikers Island, the Commission recommends developing state-of-the-art jails in each of the five boroughs with a much smaller system bed capacity of 5,500. (It is necessary to construct a jail system with a slightly larger capacity to account for separating certain populations based on security classifications and for ongoing maintenance.)¹⁴³

Under this scenario, facilities would be constructed in the Bronx, Brooklyn, Queens, Staten Island, and Manhattan. These vertical facilities would vary in size, based on the expected population in each borough. According to the Commission’s analysis, the largest facility would be Manhattan and the smallest would be Staten Island. Each of the facilities would have varying capacities proportional to the population held from each Borough. Ideally, the jail facilities would be developed on City-owned property and as close to the courthouse as is practically possible to limit transportation needs and case processing delays. This could include replacing the existing borough facilities or identifying other land near each of the borough courthouses.

These new facilities would be designed to serve not just detainees, corrections officers, and other staff, but surrounding neighborhoods. The exterior appearance of any jail facility should inspire confidence in what happens inside. There are many examples in the United States and abroad of holding facilities that manage to balance the demands of security with the need to present a

welcoming face to the neighborhood. The exteriors of jail facilities should reflect the look and feel of their surroundings. They should also contain separate units, to be accessed from the street, that house services that offer programming to facilitate rehabilitation and reentry. These spaces could also be used to hold community meetings or public services like a library, a job training center, classrooms, as well as commercial and retail businesses.

The Commission's vision for a more humane jail system in New York City is based on a facility design that is as unrestrictive as possible while still managing risk of flight, self-harm, and harm to others. It is also based on re-engineering how the Department of Correction conceives of its work.

The ideal jail environment maximizes freedom of choice and movement, enabling detainees to access a range of services – like counseling, education, recreation, family visits, and health care – and make choices about how they spend their time with minimal intervention from staff. In order for this model to function safely, the Department of Correction will need to prioritize training and employ a highly nuanced security and needs classification system that takes into account age, mental dexterity, maturity, and gender preferences.¹⁴⁴

Design has a direct impact on behavior. Traditionally, jails in the United States have been designed using a 'reactive' versus 'proactive' approach; they are essentially built to respond to negative behavior rather than to encourage positive behavior.¹⁴⁵ Even when they are well-maintained, traditional jails tend to have low ceilings, poor acoustics, artificial lighting, and other elements that make for an oppressive environment.¹⁴⁶ A formerly incarcerated participant at a design workshop in the Bronx reported that the noise on Rikers Island was so loud and pervasive that he could still hear it in his head after his release.¹⁴⁷

Traditional jails are typically designed using a linear, intermittent surveillance model. On Rikers, single or multiple-occupancy cells are lined up along corridors that typically meet at right angles, offering limited opportunities for monitoring by correction officers. Even more dangerous, many detainees on Rikers are housed in large group rooms with little to no privacy.

It doesn't have to be this way. We know that jail design can actually help achieve better outcomes. Certain European countries have invested in facilities with progressive programming strategies and therapeutic environments. Facilities like the Bastøy and Halden prisons in Norway, as well as Heidering prison in Germany, acknowledge the reality that incarcerated individuals will eventually be released back into the community.¹⁴⁸ Though prisons, the facilities will occasionally hold pre-trial detainees. The philosophy does not change for either population. These facilities provide apartment-style housing, including shared kitchens and individual cells with televisions, computers, showers, and bathrooms. With the exception of those requiring closer supervision, the general population is permitted to move freely throughout the facilities. Many of the buildings incorporate safety glass on their exteriors to maximize natural light, as well as soft furnishings inside to create normalized, comforting interiors.

In keeping with the space design, staff in these facilities rely on communication skills and de-escalation tactics to maintain order, rather than remote supervision and the use of force. In Germany specifically, correction officers undergo a two-year program that includes

communication skills training, criminal law, and educational theory in addition to self-defense.¹⁴⁹ This approach professionalizes correction officers, helps them see their role within its social and political context, and gives them the interpersonal skills necessary to maintain safety in open, free-movement settings.

Inspired in part by the examples of good practice that we have learned about in other parts of the world, the Commission believes that a state-of-the-art jail system for New York should incorporate the following elements:

- The use of a **direct supervision** design and management model that improves relationships between staff and detainees and relies on clear sightlines and communication skills to maintain order
- Social services housed together in a **town center**, including courtrooms for early appearances, allowing individuals the freedom to access programming in a central location
- An emphasis on **clustered housing** that groups detainees together thoughtfully, with a special focus on the unique needs of special populations, including women, adolescents, transgender detainees, and those with mental health issues
- The use of regular **fixtures and furnishings**, as well as natural light, softer artificial lighting, better acoustics, and temperature control to reduce stress and encourage good behavior
- An evidence-based **admissions process** that begins planning for reentry at the moment of intake
- Humane **visiting procedures** that encourage family members, loved ones, and community-based service providers to remain connected to those behind bars
- A new approach that emphasizes **mental health care** for those struggling with behavioral health issues
- An investment in **high-quality staff training** for correction officers, including a new training academy
- A commitment to improving perceptions of **legitimacy** as a means to promoting compliance with jail rules
- A **sense of mission** that is spread throughout the entire Department of Correction and incorporated into everything the Department does

Each of these elements is described in more detail below.

Direct Supervision

A “direct supervision” jail design provides improved sightlines for officers and more options for successfully managing detainee behavior. It reduces the physical barriers between staff and detainees. And it facilitates constant staff interaction with detainees, enabling problems to be identified and resolved as quickly as possible.¹⁵⁰

The direct supervision model is a state-of-the-art approach specifically designed to relieve these issues. In this layout, officers are posted within residential units that are arranged like pods, with cells wrapping around central living areas. Spending the majority of their time within these living areas, officers can monitor all detainees at once and use relationship-building and de-escalation skills to keep violence at bay. In high-rise buildings, direct supervision functions by managing each floor as its own unit in order to minimize the vertical movement of detainees. Former correction officers who attended the Commission’s design workshops stressed the importance of facility design that allows for the supervision of more detainees at once to improve their approach to detainee behavior management. They also reinforced the need for a more efficient layout that relieves the stress and dangers of transporting detainees from one area of the facility to another.

The original direct supervision facilities in the United States were federal facilities opened in the 1970s. The goal was to provide a more humane experience for residents while allowing staff to exert minimum effort in supervising the incarcerated population.¹⁵¹ Over the last several decades, a number of new direct supervision facilities have opened up across the United States. Members of the Commission were able to visit several of these facilities, including the Van Cise-Simonet Detention Center in Denver, which connects directly to a courthouse. Designed to look like any other civic building, the facility blends in completely with the surrounding neighborhood.¹⁵² Arlington County Jail in Virginia is another direct supervision facility that is unimposing from the outside and also directly connected to a courthouse.¹⁵³ At Arlington, staff actively manage detainee behavior and are encouraged to teach detainees to be self-sufficient.¹⁵⁴ The Westchester County Detention Facility in Valhalla, New York operates several direct supervision units. Its staff have reported an improvement in detainee behavior by ensuring there are clear sightlines into all areas of the housing units, and by incorporating human-centered design elements, including natural light, soft acoustics, and a light color palette.¹⁵⁵

Direct supervision is not just a design concept. It is an operational philosophy that relies on proper detainee classification, staff training, and institutional leadership to succeed. If properly implemented, the evidence suggests that direct supervision facilities can significantly reduce violent incidents.¹⁵⁶

A primary goal of direct supervision is to increase safety for both officers and detainees alike. Though the absence of physical barriers between staff and detainees may raise initial anxiety for officers, research suggests that the presence of a properly trained officer in a dayroom reduces conflict between detainees and staff while limiting opportunities for detainees to create weapons and form gangs.¹⁵⁷ If management and officers are committed to direct supervision and properly trained, officers become intimately familiar with behavior patterns of the population they supervise, allowing them to respond to detainees’ basic needs while also holding people

accountable for their behavior.¹⁵⁸ When officers are consistently present and building relationships with those they supervise, it is easier for them to establish their authority and maintain safety.

In fairness, the direct supervision model is not a brand new idea for New York City. The City used similar principles to redesign the Manhattan House of Detention, a local jail known informally as “The Tombs,” in 1983.¹⁵⁹ In the early 2010s, the City commissioned the design of direct supervision facilities on Rikers Island¹⁶⁰ and in Brooklyn¹⁶¹ to replace existing facilities, but the designs were never built.

The New York City Department of Correction is currently incorporating a revamped classification system¹⁶² as well as direct supervision training into its educational programming for staff.¹⁶³ However, in order to be truly successful, the model requires adherence to the core design principles – residential pods with cells arranged around dayrooms, access to outdoor recreation from residential units, and clear sightlines throughout the entire unit. True direct supervision will require brand-new facilities.

To maximize safety, all new facilities in New York City should also be designed to include complete video surveillance coverage and other technology, such as body scanners, as per the *Nunez* consent decree.¹⁶⁴ New construction should also adhere to all guidelines outlined by the Prison Rape Elimination Act, the American with Disabilities Act, and other laws governing the design and use of space.¹⁶⁵ The goal should be to ensure that there are no blind spots in the facilities where people can be harmed out of view.

Town Center

While much of the conversation about Rikers Island focuses on the relationship between correction officers and detainees, there are, in fact, multiple actors on the Island. NYC Health + Hospitals provides a myriad of clinical, mental health, substance abuse, and therapeutic programs. Other service providers include Fortune Society, Osborne Association, Center for Economic Opportunities, Friends of the Island Academy, the Department of Education, and the Center for Alternative Sentencing and Employment Services (CASES). These providers offer a range of services such as education, workforce development, case management, mental and behavioral health, reentry, substance abuse treatment, and family support programs. In addition, defense organizations like The Legal Aid Society, Bronx Defenders, New York County Defenders, and Brooklyn Defenders, to name only a few, provide legal counsel and assistance to incarcerated individuals within the jail.¹⁶⁶

Here’s how social services typically work at Rikers Island:

Since there is not nearly enough dedicated space to go around, services are often provided within the day room of the residential unit. Service providers describe this arrangement as akin to intruding into someone’s living room – the dayrooms are where detainees go to unwind and watch television, and they are often situated within view of the bathrooms and showers. Carrying out programs in this environment compromises detainees’ privacy, limits their freedom of choice, and creates distracting and potentially unsafe conditions for staff.¹⁶⁷ Service providers

also lack the kind of space they need to communicate privately, away from the incarcerated population and correctional officers.¹⁶⁸

We know there is a better way.

Ideally, what this looks like is the creation of a “town center” or a central space in the facility that allows individual detainees to move about freely as long as they stick to their scheduled plans.¹⁶⁹ In general, programs – be they religious, medical, educational, or recreational – should be centralized in the core of a facility, where eligible individuals can access them throughout the day.

The town center area of each facility should include a centralized clinic space for physical and mental health needs, as well as a pharmacy, dining hall, and space specifically designed for programming. Program spaces should be flexible enough to allow for new programs and new technologies as they evolve. Flexibility is also crucial to accommodating the diverse spiritual and cultural needs of detainees.

Incarcerated individuals should be able to access the town center directly from their housing units in order to minimize transport needs within the jail and provide greater freedom of movement. Programs in the town center should positively engage detainees and connect them with the kinds of care and resources designed to facilitate their transition to law-abiding behavior in the community.

Finally, the town center should include courtrooms for arraignments and preliminary hearings, which would ease operational burdens for the Department, reducing the number of trips to external courthouses.

Clustered Housing

Our research revealed that the best approach to housing detainees is “clustered housing,” where units are located in close proximity to areas for dining, case management, programs, and recreation. Ideally, housing unit capacity should fall between 32 to 56 beds, enabling correction officers assigned to steady staff posts in the units to develop relationships with the residents and work with them to maintain order.¹⁷⁰

Providing single cells for each detainee offers privacy that many dormitory-style and linear jails lack. Detainees should have the ability to be by themselves in their cell. Apartment-style housing, as is employed in some European facilities, takes this idea one step further. Perhaps this brand of housing could serve as a transitional housing program for City-sentenced detainees.

Any thoughtful housing system groups individuals at a similar risk level in a demographically balanced space. A strong Inmate Behavior Management (IBM) plan is critical. Developed by the National Institute of Corrections, IBM plans recognize that basic human needs shape behavior. If a person’s needs are not met, he or she is likely to break rules in order to fulfill those needs. On the other hand, a person whose needs are satisfied is more likely to comply with established codes of conduct.

The IBM model classifies needs into four basic categories: (1) physical needs, (2) safety needs, (3) social needs, and (4) emotional needs.¹⁷¹ To create a safe and secure environment, the Department of Correction must take care of each of these needs. Crucially, this means not just providing food and shelter, but also creating space for detainees to build positive social and emotional bonds with each other and with relevant service providers.

Historically, the Department has over-relied on punitive segregation as a response to detainee misconduct. Without a range of disciplinary responses for low-level misconduct, staff often see little choice but to employ punitive segregation. Developing structured sanction grids can help staff select less restrictive responses to misconduct such as revoking TV and recreation privileges, preventing commissary access, assigning a less desirable work shift, or requiring anger management classes. The Department has ceased the use of punitive segregation for detainees 18 and under and has begun implementing promising new incentive programs to encourage positive, safety-oriented behavior in both detainees and staff.

Even with a well-developed range of disciplinary sanctions and strong incentive programs, we acknowledge that jail facilities must include some segregated units to be used as a true last resort, or for temporary de-escalation during a crisis. New jails could include spaces that look and feel nothing like segregated housing looks today by including natural light, normal furnishings, and a comfortable acoustic and temperature environment. The primary purpose of these spaces would be to temporarily isolate a detainee, or to protect a detainee who explicitly seeks isolation, not to further punish through inhumane conditions.

Another important piece of the puzzle is an evidence-based classification system, where detainees are assessed using validated assessment tools to determine both the risks they pose and the needs they present. This information should be used to craft individualized plans for housing, supervision, and service provision. Programming should include vocational training, education, substance use treatment, cognitive-behavioral therapy, and parenting courses. Programming to address individual needs must be responsive to sub-populations and their circumstances, particularly women, young adults and adolescents, and those facing mental health challenges.

Indeed, these populations (and others besides) require dedicated spaces designed to meet their unique needs. For example, dedicated space for women should be tailored to sexual assault victims, pregnant women, and mothers who need contact with their children. Transgender-specific units should be designated in both women's and men's areas to protect the safety of all transgender individuals held.

Fixtures and Furnishings

“Environment cues behavior: If you put people in a cage, they will act certain ways.” – Ken Ricci, architect, Ricci Greene Associates¹⁷²

Humane jail systems are fitted out with normalized furnishings – porcelain toilets with seats, upholstered furniture, carpeting, and the like. New jail facilities in the boroughs would present an opportunity to work with acoustics specialists to reduce noise. We know from research that

better acoustics can decrease anxiety, stress, and frustration and create a more peaceful environment.¹⁷³

Maximizing natural light can also make a difference, creating a sense of calm and openness and keeping both detainees and staff connected to the real world.¹⁷⁴ Access to natural light has been shown to decrease fatigue, improve mood, and reduce eyestrain. Natural light is also crucial to regulating circadian rhythms, improving sleep patterns.¹⁷⁵ When artificial lighting is needed, using softer lighting and dimming it at night can also add to a healthier environment.

Furnishings and fixtures send a message to the incarcerated population about what kind of behavior is expected of them. Traditional jail facilities tend to be furnished with indestructible items made of steel and bolted to the floor. Artificial light is used 24 hours a day. Excessive and unpredictable noises are a daily fact of life. All of these factors communicate non-verbally to detainees that they are expected to behave dangerously and cannot be trusted to use normalized spaces.¹⁷⁶ They effectively encourage misbehavior.

At our design workshops, we heard criticisms of existing jail environments from staff and detainees. Workshop participants also stressed that staffers who work in jails are affected by jail interiors. As Elias Husamudeen of the Correction Officers Benevolent Association put it, “When you build new jails, that’s good for correction officers. Correction officers live where detainees live.”¹⁷⁷ Providing comfortable, high-quality work environments demonstrates to staff that they are valued, which in turn will help to recruit and retain qualified personnel. Staff-only areas – offices, entrances, bathrooms, break rooms, etc. – should be designed and maintained according to typical workplace standards.¹⁷⁸ Additional spaces like wellness centers, staff lounge, locker rooms, and dining and meeting areas would further increase well-being at work.¹⁷⁹

Admissions Process

The design of a jail’s admissions process sets the tone for the rest of your stay in the facility. A more humane experience acknowledges that most people entering jail have not yet been convicted of a crime, and are therefore presumed innocent.

The current intake process in New York City is long and arduous. Prior to arriving at Rikers Island, defendants go through a two to three-day process of arrest, booking, and arraignment. Once they arrive on Rikers, they are then held in a series of bullpens while a risk assessment is performed and they are assigned to a bed. It is not unusual for a defendant to go six or seven days without a shower or hot meal.¹⁸⁰

In the future, admissions areas should be built with separate spaces for incoming and outgoing defendants, with sufficient staff to address the needs of each population. The goal should be to expedite the process, using technology as appropriate to facilitate information sharing not only with corrections staff but programming staff as well. The intake processing area should use an open seating arrangement rather than holding cells to demonstrate to incoming defendants that they are trusted to cooperate with jail staff rather than expected to misbehave.

The detainee's housing location should be determined by a validated classification system. An objective classification system is a management tool that maintains safety and helps staff do their jobs by assessing risks posed by detainees as well as their specific needs. In 2015, the Department of Correction began using a new, empirically-developed tool that employs an 'if, then' decision tree to classify detainees according to age, mental health history, number of prior arrests, gang affiliation, charge severity, and history of violent conduct under DOC custody.¹⁸¹ A strong classification and housing strategy is critical to behavior management.

Planning for release should also begin at the moment of intake using an evidence-based risk and needs assessment. Assessments of defendants should be shared with service providers capable of providing responsive programming. This can also improve behavior in the facilities and facilitate meaningful linkages upon release. As advocated by the Transition from Jail to Community model, a guided decision-making matrix can help match individuals to various interventions, based on risk level, offense, length of stay, and disposition status.¹⁸² Given the large volume and generally short stays of individuals under Department of Correction custody, delivery of comprehensive services to each person coming through can be challenging. Evidence-based screening tools can guide the deployment of time and resources.

Whenever possible, case managers and jail staff should make referrals to community-based organizations using the information gathered from the individual's risk and needs assessment. Facilitating these relationships increases the likelihood of sustained engagement after an individual has been released and helps to ensure continuity of care.

For those sentenced with determined release dates, longer term reentry planning is possible, targeting those determined to be at higher risk of recidivism. This kind of approach is currently being tested, with encouraging results, in Allegheny County, Pennsylvania. Allegheny County is working to improve the reentry process, with a particular focus on medium- and high-risk detainees sentenced to at least six months in jail. As part of the program, participants received targeted programming in preparation for reentry as well as twelve months of services following their release. An evaluation documented that just 10 percent of program participants were rearrested, while a comparison group experienced a 34 percent probability of rearrest.¹⁸³

Visiting Procedures

“Chaotic.” “Confusing.” “Painful.” “Humiliating.” “Frightening.” “Traumatic.”

These are not descriptions of being locked up on Rikers Island. These are adjectives that family members used to describe the experience of *visiting* Rikers Island to see a loved one. This testimony was typical of what we heard:

Officers scream out rules and treat visitors like cattle, pushing them against a wall to be sniffed by dogs . . . When visitors ask questions, they are told to shut up and pay attention to instructions, yet officers seem to make up their own rules according to their daily mood or their own frustrations. After hours of being moved around like cattle, yelled at, going through metal detectors, and being searched, the visitors finally have a one-hour visit with their loved ones in an uncomfortable freezing room full of detainees and their

*families, screaming to try to get their conversations across. At times during the visit the officers try to get attention by screaming aloud that the detainees who don't wish to go through the count should end their visit now.*¹⁸⁴

The Department of Correction is understandably concerned about the potential exchange of contraband between visitors and detainees. In an effort to preclude this possibility, the search procedures on Rikers often involve dogs and strip searches.¹⁸⁵

Though the Board of Correction standards allow children under the age of 14 to sit on their incarcerated parents' laps during visits, the visiting areas are designed in such a way that makes them inhospitable for children. Children are required to pass through other people's visits, around tables, to reach their parents.¹⁸⁶ Beyond this, the spaces for visitors are uninviting – cold, noisy, and harshly lit. One mother described the experience this way:

*My children's father has had no-contact visits for over a year now, and it's been unbearable for our family. I watch my three-year old try to 'unlock' the glass window with the locker key, and I have to explain to her she can't do that. Her father can't touch her, hug her, smell her, kiss her, tickle her, or throw her up in the air as she smiles. This form of punishment for their father is actually torture for us.*¹⁸⁷

We know that visits are a crucial lifeline to the outside world for many detainees. The Board of Correction has highlighted visits with family and friends as critical to positive outcomes for incarcerated individuals, helping them maintain relationships with people from the community who can support them upon release.¹⁸⁸

In order to take advantage of these positive effects, jails should actively encourage visits. Visiting spaces and procedures should be designed to facilitate rather than limit parent-child interaction. Toys, books, and games can help. So can natural light and using a variety of softer materials. Technology, such as an online visiting appointment calendar can allow families to plan visits around work, school, and child care needs, while also making the visiting process more efficient for jail staff. Just as important, staff working in the visitors' area should be specially selected and trained to ensure that they interact with visitors respectfully and skillfully. Tanya Krupat, Director of the Osborne Center for Justice Policy and Practice, urges the Department to hire officers "who actually want to interact with visitors and who have been trained to do this respectfully, effectively, and skillfully."¹⁸⁹

Finally, as a supplement to – and never a replacement for – in-person visits, detainees should be afforded an opportunity to visit with loved ones using technology, including tablets within their cells.

Mental Health Care

Nearly 40 percent of the population on Rikers Island are flagged for possible mental health needs. This adds up to more than the number of adult patients in all of New York City's psychiatric hospitals combined.¹⁹⁰ The Commission estimates that nearly 20 percent of the

incarcerated population suffer from serious and persistent mental health conditions, such as schizophrenia and major depression.¹⁹¹

Attempting to provide appropriate care for these individuals in a jail is an incredibly difficult task. It is fair to say that none of the jails on Rikers Island were designed to provide the level of care that these individuals require.

Too often, the criminal justice system is used as the primary response to individuals with mental health issues who might be better served by links to mental health treatment in the community. In 2014, the Mayor's Task Force on Behavioral Health and the Criminal Justice System released an action plan for providing more effective care for those with mental illness, including more diversion options, earlier and more effective screening, dedicated mental health observation units within jails, more effective reentry planning, and increased supports in the community.¹⁹² The Commission commends this work. We recognize the need to support a community-based mental health care system.

"Some of these people shouldn't be in jail." - Elias Husamudeen, President of the Correction Officers Benevolent Association in NYC.

New, borough-based facilities could play a role here. In those cases where diversion is a more appropriate response, a drop-off center (as discussed in the Rethinking Incarceration section above) can be co-located with other providers in a separate unit in the non-secure side of the facility. Assertive Community Treatment (ACT) teams can provide a more effective sentencing option than jail. Ultimately, the City could build on the work of the Behavioral Health Task Force to make a meaningful investment in community-based care, reducing the number of people held in jail and providing a reprieve to a system that is neither staffed nor designed to serve individuals.

Even as the City creates new approaches to behavioral health, we know that some individuals with mental health issues will still find themselves in the criminal justice system. Those who do need to be incarcerated should be housed in units designed specifically with treatment and mental health programming in mind. Each new facility should include top-quality clinic space to address the medical and mental health needs of those who are detained.

Quality Staff Training

Following *Nunez v. City of New York*¹⁹³, a class-action lawsuit calling for an overhaul of the Department of Correction, Mayor de Blasio and Commissioner Ponte announced a 14-point agenda to reduce violence on Rikers. In the short-term, the Department plans to limit incoming contraband, improve detainee classification and housing systems, expand security camera coverage, increase programming to reduce idle time, and build capacity of crisis intervention teams to de-escalate violent situations. Longer-term goals focus on improving leadership development and culture, redefining the Investigations Division, improving recruitment and performance management, measuring operational performance, training staff, and improving facility conditions.¹⁹⁴

In addition to the 14 point plan, the Department is actively engaged with a federal monitor to implement reforms on use-of-force training, anonymous and accurate reporting and investigation procedures, increased video surveillance, and greater accountability for staff.¹⁹⁵ Thus far, the monitor has noted a strong commitment to departmental reform, particular in terms of risk management, direct supervision training, use-of-force investigations, and the end of punitive segregation for detainees ages 18 and under.¹⁹⁶

Make no mistake: correction officers have incredibly stressful jobs. Work-related stress can negatively impact officers' health, their work performance, and the lives of their families – not to mention the incarcerated population. Many officers complain that they have not been adequately prepared for the challenges they face. This adds to the stress they experience on a daily basis.

The Commission commends the work the Department has undertaken in order to see improvements in these areas. The Commission's recommendations seek to support and enhance these reforms.

Many of the Commission's recommendations rely on the positive actions of staff to provide care to those behind bars. Care can take many different forms. The Commission recommends the Department double the length of the training academy, prioritizing training in communication skills, direct supervision principles, de-escalation, and procedural justice over use-of-force training in all educational programs. All officers should also receive training in mental health and adolescent brain development. Officers assigned to unique settings (e.g. visitors areas, young adult facilities, mental health units, and women's facilities) should receive specialized training for those posts. Officers should also receive regular in-service training and they should be encouraged to pursue higher education.

Just as importantly, correction officers need high quality space in which to develop and practice these skills. Currently, staff training happens in facilities that are cramped and totally inadequate. This sends a powerful non-verbal message that correction officers are not valued and that the training is not important.

Going forward, the training of correction officers must be optimized for effective learning. This means investing in a state-of-the-art training academy. This means providing space for ongoing officer training within each jail facility. And this means securing high-quality curricula and trainers.

Legitimacy

When people think rules and procedures are legitimate and fair, they are more likely to comply with them. In recent years, this common sense wisdom has been buttressed by researchers who have documented that a commitment to improving legitimacy can encourage law-abiding behavior.¹⁹⁷

How might this insight play out in a jail setting? Researchers have found that correctional environments that incorporate legitimacy-building efforts (e.g. are more humane and more fair) experience less disorder.

Perceptions of legitimacy are formed through both direct and indirect experience. How you are treated in jail matters. But your perception of how others are treated also matters. Both of these factors combine to determine how you feel about the legitimacy of correction officers.

Ultimately, we want detainees to comply with the rules of our jails not because they are subject to the use of force, but because the rules are fair and morally justified and they are administered by honest and competent officers who are invested in their success.

The idea of procedural justice must be hard-wired into the operations of the Department of Correction. This includes rethinking how correction officers are trained and assessed. And it means looking at the entire apparatus of the correction system – signage, site design, procedures, and so on – with an eye toward how these elements are perceived by both incarcerated individuals and the general public. It also includes a more direct and streamlined relationship, including access to data and documents, between the Department of Correction and its oversight body the Board of Correction. The function of the Board of Correction is to set standards for the Department and hold them accountable to these standards – at present, there are no mechanisms in place to ensure that the Board has access to the information to provide the necessary oversight.

A focus on procedural justice also means focusing on how the Department treats correction officers – making greater efforts to provide meaningful opportunities for advancement, promoting a fair disciplinary process, giving officers a voice in policy decisions, etc. When officers feel supported and identify with the Department, they are more likely to reflect the values of the Department.

A Sense of Mission

Police departments across the country are transforming the role of officers away from being a “police *force*” to becoming a “police *service*.” As part of this, individual officers are asked to think of themselves as guardians rather than warriors.

In other words, police departments are changing how they view their relationship with the community, seeing them as a constituency that officers serve instead of control. And they are broadening their purview beyond law enforcement to include an increased emphasis on crime prevention and problem-solving activities.

New York is a case in point. In 2015, the New York Police Department launched a “Neighborhood Policing” plan that encourages officers to look for opportunities to engage with community members in new ways that are not enforcement- or response-related and are non-confrontational.¹⁹⁸ The underlying idea here is that public safety is not something that the police can achieve by themselves – it must be co-produced with the help of the public.

What is true in our neighborhoods is also true inside our jails.

What might it look like to adapt these ideas to a correctional setting? Is it possible for correction officers to engage detainees in addressing quality-of-life issues and the kinds of conditions (e.g.

lighting and blind spots) that permit crime to flourish? Would this help incarcerated individuals to feel more ownership of the facility and take better care of it? Would it reduce the stress that correction officers experience on a daily basis?

There is evidence to suggest that many correction officers are confused about their roles. There is good reason for this. Correction officers receive contradictory messages about whether the role of correctional facilities is to punish or rehabilitate (or both). The current job description for correction officer in New York City lists a number of duties, but it offers little guidance about how to care for those incarcerated and it does not communicate the values of integrity, respect, compassion, inspiration, and transformation that members of the Department are expected to uphold, per the Department's values statement.¹⁹⁹

Going forward, the Department of Correction must communicate clearly to staff what is expected of them. The goal here should be to create an organization with a clear mission that attempts to live up to its highest ideals each and every day. A sense of mission must suffuse everything the Department does, from crafting job descriptions to creating performance metrics.

We have spelled out many of the elements – physical, programmatic, and procedural – that we think should comprise a state-of-the-art correctional system in the 21st century. Our goal in doing so is to change the culture of New York City jails. This will only happen if these changes are embraced by the leadership of New York City and the Department of Correction and are aggressively spread throughout the system.

3. Cost Implications

The Commission estimates that the development of the state-of-the-art correctional system that we have proposed would take ten years to develop at a cost of \$10.6 billion.²⁰⁰ Assuming that the City's debt service would be 6 percent a year for the next thirty years, the annual debt service cost of five new jail facilities (one for each borough) would be approximately \$770 million, adjusting for inflation.

Additionally, the Commission recommends the construction of a new training academy to provide correction officers with the skills needed to be successful in the new facilities. The Commission estimates the new academy would cost \$320 million to build, or (using the same debt service estimates described above), \$23 million a year in additional debt service. In addition to a new facility, we think resources should be devoted to improving the quality and quantity of the trainings offered at the academy. Doubling the length of Department of Correction training would cost \$24 million annually. Additionally, the Commission estimates that the cost of providing the diversion programs and alternatives to incarceration (discussed in the Rethinking Incarceration section) would add approximately \$260 million a year.

Finally, the existing facilities cannot be ignored as new facilities are built. The City has already allocated \$1.6 billion in the capital budget for ongoing maintenance of the existing facilities. That maintenance should certainly continue in the interim. Furthermore, the Commission also recognizes, in the interim, the City may need to develop new temporary facilities for sufficient swing space as the new facilities are built. The city has also already allocated \$430 million in the

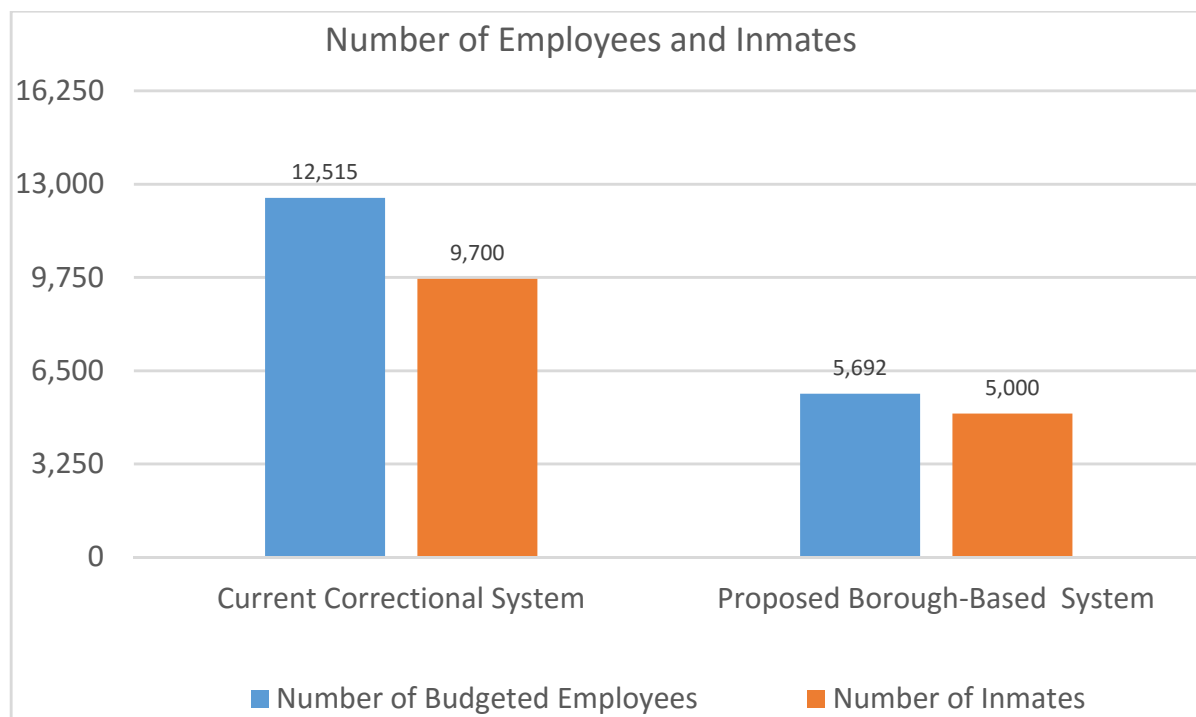
capital plan, which could fund temporary facilities to provide sufficient bed space during the transition into the new jail system.²⁰¹

These costs are not insignificant, but they must be weighed against the benefits of our approach. An entirely new correctional system designed on the principles we have described above would be manifestly more just, more humane, and more effective. It would also have enormous cost savings.

With the development of new, modern jails built around best practices, it should be possible to reduce Department of Correction staffing levels along with the jail population. Currently, there are 1.08 uniformed officers for every 1 detainee in custody, or 10,500 budgeted uniformed positions for the current average daily detainee population of 9,700. Total budgeted staff for the Department numbers 12,515 with 2,000 civilian staff, which translates to a total staffing ratio of 1.29 employees for every 1 detainee (1.29:1).

According to the National Institute of Corrections, direct supervision jails like the ones we envision have lower staffing costs than traditional facilities: “Operational costs were lower for the direct supervision cases. Staffing costs were . . . 33 percent lower for the direct supervision jail.”²⁰² Accordingly, we have estimated that the necessary uniformed officer to detainee staffing ratio in the new facilities could be decreased by at least 33 percent to a ratio of 0.73 uniformed officer for every 1 detainee (0.73:1).²⁰³ This translates to approximately 3,700 uniformed staffers to supervise a population of 5,000 detainees.

Given our desire to promote positive, pro-social programming for those incarcerated, we recommend no reduction in civilian personnel at the Department of Correction despite the substantial decrease in detainee population. (Indeed, we recommend dedicating further funding to support detainee programming, including support for non-profit service providers, at an annual cost of \$29 million.) Maintaining civilian positions at 2,000 employees to go along with 3,700 uniformed officers, the Department of Correction would remain an extremely well-staffed system, with significantly more employees than detainees (1.14 employees for every 1 detainee).²⁰⁴



1.29 employees per inmate

1.14 employees per inmate

The Commission believes that this uniform staffing ratio of 0.73:1 is not only attainable but is conservative. Many modern, direct supervision facilities across the country have significantly lower staffing ratios. For instance, the downtown Arlington County Jail has approximately 0.33 uniformed officer for every 1 detainee, Denver’s Correctional System has approximately 0.37 uniformed officer for every 1 detainee, and San Diego’s Las Colinas Correctional Facility has an approximate uniformed staffing ratio of 0.33 uniformed officer for every 1 detainee.

This staff restructuring would also decrease the annual cost of uniformed personnel to \$720 million — a significant reduction from the current Department of Correction preliminary budget, which projects uniform personnel costs of \$2.1 billion, including salary, fringe benefits, and pension contributions.²⁰⁵ This amounts to a savings of \$1.6 billion annually.

Additionally, despite the daily detainee population decreasing by half, the Commission’s estimated cost-savings also do not decrease funding for the “Other than Personnel Services” spending at the Department of Correction, leaving this funding constant at \$160 million a year. This savings estimate does not include any corresponding decreases in overtime. This coupled with the projected system’s conservative staffing ratio of 1.14 employees for every 1 detainee leaves the Commission confident that annual savings in the realm of \$1.6 billion are conservative, realistic, and attainable.

The Commission believes that the best way to achieve these staffing goals is through attrition over time as the Department shifts into the new facilities.²⁰⁶ This means that the associated cost savings would be realized gradually. The estimated \$1.6 billion in annual savings would not be fully realized until the uniformed workforce had been reduced to the recommended levels. It will

also be important to continue to hire and train new staff during this transition, and the Commission's fiscal model assumes hiring 300 new Correction Officers per year.

Reducing correctional spending by \$1.6 billion is not inconsequential. But when calculating these savings over time – these savings will continue year after year – the result is budgetary savings of tens of billions. This kind of money can enable huge investments in health care, libraries, education, and other essential city services.

Reform Project	Total Capital Cost including inflation	Annual Expense Budget Cost/Savings over thirty years, inflation adjusted****
5 New Borough Facilities (5,500 beds)	\$10.6 billion	\$770 million*
New Training Facility	\$320 million	\$23 million*
Reinvest in Expanding Correctional Academy Training		\$24 million
Increase Funding on Detainee Programming		\$29 million
Cost of ATIs/ATDs		\$260 million
Total Cost	\$11.0 billion	\$1.11 billion
Operational Savings:		Potential Annual Operating Savings
Total operational savings from improved staffing ratios and the decreasing detainee population		\$1.6 billion**
Net Annual Benefit***		\$540 million a year

Embedded within the chart:

*Approximate annual cost of debt service over a thirty-year time period

**Approximate annual savings attainable after fully completing the move to the new system

***Actually benefits and costs will not run concurrently due to the delayed implementation of cost savings

**** This charts annualizes the cost/savings of the new correctional system over a thirty-year term. The coupon rate of the debt is calculated at 6%, while inflation for budgetary costs/savings (such as increased funding on training or reduced spending on staff) is inflated using the average CPI of 1.1% over the last four years (2013-2016) as described above.

The savings that could be realized by rebuilding jail facilities on Rikers Island would not be the same order of magnitude, as operational inefficiencies related to operating a penal colony (maintaining security on the bridge, transporting detainees to court facilities in the boroughs, etc.) would persist. Creating entirely new jails on Rikers Island would also be significantly more expensive to build. According to the New York City Department of Design and Construction, the cost of building on Rikers Island is generally 8-15 percent more expensive than construction in the boroughs. The process is further complicated by delay; construction workers are typically

able to work only 3-4 hours a day due to challenges transporting both people and materials onto the Island. Additionally, if new permanent facilities were developed on the Island, the City would need to demolish all 14 existing jail facilities to make room for these new facilities, at an estimated cost of \$735 million.²⁰⁷ And, of course, in this scenario, there is no repurposing of Rikers Island.

The Commission estimates that the construction of 4 large jail facilities (totaling 5,500 beds) on Rikers Island would take 12 years and cost \$ 12.9 billion – approximately \$2.0 billion more than building in the boroughs.²⁰⁸ Rebuilding on the Island would also fail to address the significant barriers to developing a humane and transparent jail system that we have identified in the preceding pages.

4. Siting and Planning Process

The Commission recommends locating new facilities in the boroughs on city-owned land in civic centers as close as possible to courthouses and public transportation, with adequate off street parking for Department of Corrections support vehicles. Our goal here is to simultaneously reduce the burden of transporting individuals to court while improving access to families, providers, and attorneys. According to New York State Chief Administrative Judge Lawrence K. Marks, “If defendants were detained closer to the courthouse, production of defendants would be easier.”²⁰⁹

Transportation of individuals to court is a significant operational burden and a contributor to case delay. The Department of Correction moves more than 1000 individuals to and from court each day, largely by bus. In FY 2016, \$31 million was allocated for this function.²¹⁰ Locating jails near the city’s criminal courts would greatly reduce these expenditures.

In advocating for a new borough-based jail system, the Commission acknowledges that building jails in New York City is a difficult task that would likely trigger the City’s extensive Uniform Land Use Reform Process and other land-use issues. We know from hard experience that Not In My Backyard (NIMBY) opposition can pose a significant challenge for projects like these.

The Commission believes that the siting and planning process for any jail facility should be as transparent as possible. The City should create platforms for local residents and organizations to voice their concerns and feedback. It is in the City’s best interests to begin conversations with the community as early as possible, before the formal legal processes begin. Above all, imparting a sense of trust to the community is vital: the City should have regular and reliable contact with residents, and maintain a visible presence, particularly when facing challenging conversations or meetings.²¹¹

Throughout the siting and planning process, the City should seek to educate the community on the full scope of issues related to Rikers Island, sharing data and other resources that can help address fears and dispel myths. For example, a common grievance with many new projects is the fear that it will cause home values to decrease. The Brooklyn House of Detention, located in a high-value neighborhood in Downtown Brooklyn with a mix of residences and retail, and the Manhattan Detention Complex in Lower Manhattan are proof that the presence of a jail does not

necessarily lower real estate value. There is also a perceived risk that dangerous members of the incarcerated population could potentially escape into the community. This almost never happens.

“Jails don’t have to be the way we have historically conceived of them – they don’t have to be a blight on the community.” – Judge Alex Calabrese, Red Hook Community Justice Center²¹²

New jail designs should not merely provide benefits to offset the burden of having a jail in the neighborhood – they should aim to redefine the relationship between communities and the criminal justice system. Design workshop participants called for buildings that felt and looked like others in their neighborhoods. The exterior should not resemble a typical jail, and the visitor area should include a comfortable and welcoming waiting area so that visitors can wait in a dignified and private space rather than lining up around the block. Even better, the visiting procedure should incorporate technology, including perhaps an option to book visit appointments in advance and check-in electronically in order to speed up the process.

The main entrance to the facility should have a welcoming, civic design that communicates that the facility is a public building for use by its neighbors, and the first floor of the building should include a mixture of secured and non-secured spaces. These non-secured spaces could include a mix of supportive, mental health, and probation services to streamline the diversion and reentry process – participants at our design workshops explained how challenging it can be for people to navigate reentry upon release, and that the integration of these services into the neighborhoods around jail facilities would improve chances of a successful life post-incarceration.

These spaces should also provide options for unrelated uses that benefit the community. These uses could include community meeting space, such as a the multi-purpose room found in the design proposal for a new 40th police precinct in the Bronx,²¹³ art-based re-entry programs focused on integrating newly released incarcerated people back into their communities, like The Guild initiative of Philadelphia’s Mural Arts program,²¹⁴ or retail space for local businesses that can contribute to the economic development of the immediate area, similar to a 2010 proposal for a new Brooklyn House of Detention.²¹⁵ Other supportive services for the formerly incarcerated, as well as more general social services like medical and child care, could be located outside the building in nearby storefronts and office spaces. This would establish broader relationships between social services and the neighborhood, and blend the facility and its uses into the fabric of the neighborhood. Finally, using sections of the jail site for green spaces like community gardens or local gathering areas like farmers’ markets would add assets to the local community.

To determine how new facilities could most benefit surrounding neighborhoods, neutral neighborhood advisory committees should be established in areas where siting is proposed. Committee members would have established ties to the community and would facilitate the engagement process by providing a venue for residents’ voices to be heard. These committees would provide platforms for community members to share underlying concerns that can then be addressed during the siting process.

Case Study: Red Hook Community Justice Center

Founded in 2000, the Red Hook Community Justice Center is the nation's first multi-jurisdictional community court, providing alternative interventions – ranging from community service and group programming to educational services and individual counseling – to individuals coming through the court. The Center for Court Innovation's siting process for the Justice Center, which included a comprehensive community engagement process to solicit and incorporate local voices into the planning process, can be used as a model for the locating of future jail facilities.

Over the course of five focus groups, the Center engaged over 50 local residents and stakeholders at the Red Hook Public Library to discuss community expectations, priorities, and perceptions for the project. Through the conversations, participants expressed their desire to be included throughout the entirety of the planning process and identified specific needs — such as a meeting space and public services – that were lacking in the community. Participants articulated the sentiment that the Justice Center should not confine itself to the “criminal element,” but that the Justice Center could contribute positively to the neighborhood through programming and services, rather than “just taking the person off the street who committed the crime.” Likewise, multiple residents underscored the importance of youth services, including educational programming and job training. Community members quickly identified needs that the Justice Center could address, making clear that an institution of public safety could not only fulfill its stated purpose, but also actively support the local community. Following discussions with community members, the Center agreed make services available on a walk-in basis to all residents, in addition to clients coming formally through the court.

The Center similarly engaged the community in selecting a physical location for the Justice Center. After identifying ten possible locations within Red Hook, the Center chartered a bus for Red Hook residents to view each location. While Center staff had originally favored a different site, community members unanimously selected a former Catholic School building in the heart of the neighborhood, where the Justice Center is located today. Engaging the community early on in the programming and physical design of the Justice Center fostered community support, allowed the Center to respond meaningfully to identified needs, and ultimately positioned the Justice Center as a positive contributor to the Red Hook community.

Case Study: The Castle

The Fortune Society's effort to locate a reentry facility for formerly incarcerated individuals in New York City similarly illustrates the capacity of a thoughtful siting process to successfully engage with and dismantle NIMBY opposition. After considering over 20 locations throughout the city, the Fortune Society selected an abandoned building known as “the Castle” in West Harlem, a decision that elicited intense opposition within the community, which had negative experience with previous facilities sited in their neighborhood.²¹⁶ In an effort to collaborate with residents and gain support, despite the initial backlash, the Fortune Society launched a comprehensive community engagement initiative, which included hiring a community liaison and public relations consultant, convening multiple public meetings, and undertaking outreach with a wide range of stakeholders in government and the community.

Among other strategies, the Fortune Society sought to educate the local community on the realities of the reentry process and their clients. Through a public awareness process grounded in facts and evidence, they confronted stereotypes and explained the need for reentry housing programs.²¹⁷ The process depended on transparency about the security and general protocols that would be in place at the facility, and after continued conversation with residents, the Fortune Society agreed not to accept level three sex offenders at the facility – a compromise that communicated Fortune Society’s willingness to hear and work with the community.²¹⁸

Additionally, Fortune Society was proactive in communicating its desire to be a positive contributor to the neighborhood through actions like eliminating the drug activity occurring on the buildings premises, eliminating garbage that had collected on-site, and lighting the area to increase the feeling of safety, all before construction began.²¹⁹ Actions like these sent an early message that the facility would work in partnership with the community. After the facility was in operation, Fortune Society regularly made space available to community groups for meetings and launched a community advisory board to solicit ongoing feedback and guidance.²²⁰ When Fortune Society began developing the conjoining parking lot, they included affordable housing for community members to address the community’s need for affordable housing.²²¹ From start to finish, the Fortune’s Society’s careful efforts to acknowledge and meet the needs of residents enabled a siting process that not only overcame opposition, but allowed the Castle to emerge as a positive community presence.

Conclusion

A smaller, borough-based jail system, anchored by state-of-the-art jail facilities will provide a safe and healthy environment for detainees and staff alike. New facilities can be developed to be an asset to the criminal justice system and the surrounding communities alike.

Building a new jail system will carry upfront cost. But the savings inherent in developing a fair, effective, humane, and just jail system will far outpace any cost. New modern, efficient jails will result in savings year after year that can enable huge investments in education, health care, libraries, and other essential city services. Closing the facilities on Rikers Island also provides a unique opportunity to redevelop the island. Together, they will provide a benefit to all New Yorkers.

Reimagining the Island

The potential redevelopment of Rikers Island presents an exciting opportunity for New York. It is rare that over 400 acres of land becomes available in the City. In developing specific reuse plans for Rikers Island, the Commission adopted four guiding principles:

1. Promoting Public Benefit: Rikers Island offers a unique opportunity to generate broad public benefits for all New Yorkers and specifically to the communities that have been most negatively affected by jails. Public benefits should include creating accessible well-paying jobs, promoting equity, improving the environment, and increasing resiliency.

2. Engaging the Community: Given the Island's symbolic importance, the Commission sought input about redevelopment options from a broad range of policymakers, thought leaders, industry experts, and other stakeholders, including those who had previously thought about Rikers Island's future and those who hadn't.

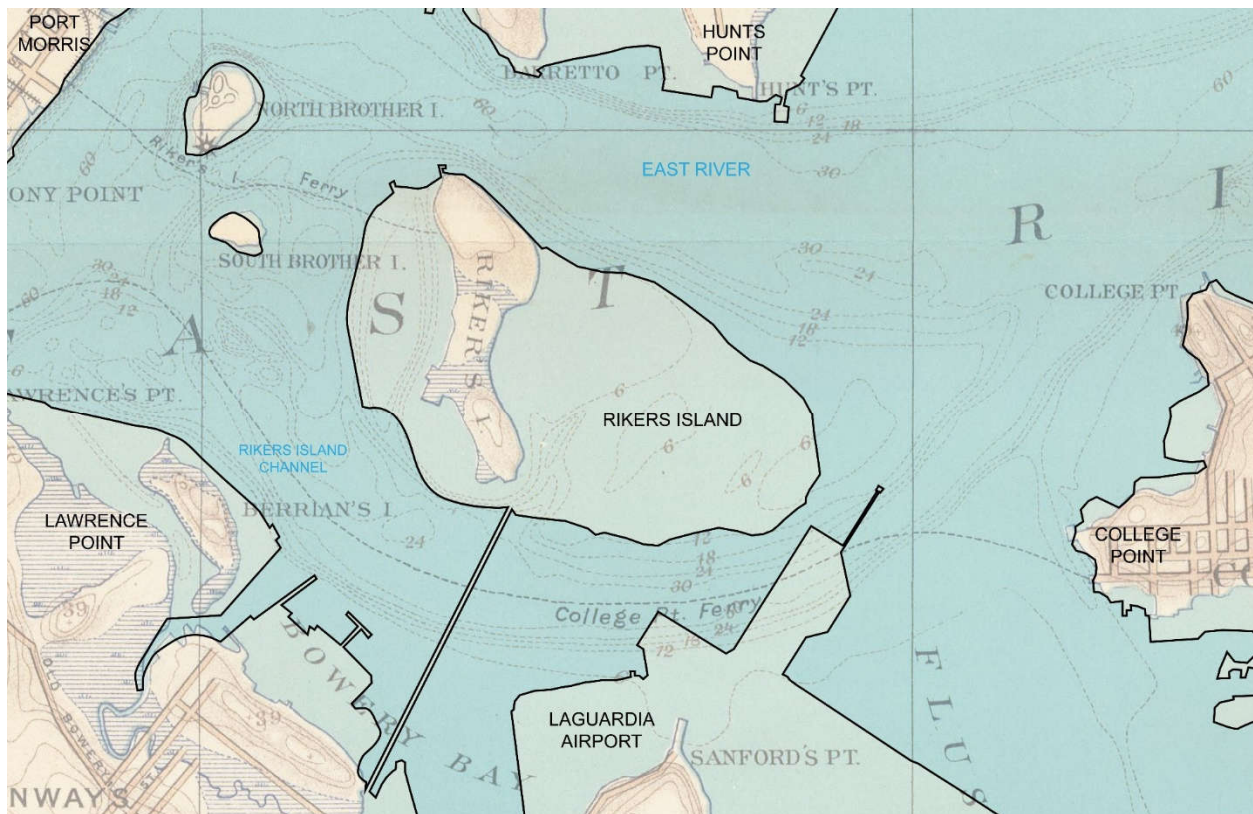
3. Thinking Long Term: Redeveloping Rikers Island is not a short-term project. Any plan will take a decade or more to achieve. Accordingly, the Commission sought to develop a long-term vision that would be flexible and responsive to shifting conditions and public goals. In short, we sought to create a roadmap for more detailed future planning. Because of the long time horizon to redevelop the Island, immediate improvements to Rikers facilities that better the lives of those on the Island should not be ruled out.

4. Addressing History: The Commission recognized that Rikers is not a routine redevelopment project. The uses of the Island have historically inflicted harm on specific New York City communities such as Central Brooklyn, Southeast Queens, the South Bronx, and Upper Manhattan. These harms must be addressed through criminal justice reforms and tangible acts of remembrance and investments in the affected communities, including job training, re-entry programs, and participation by minority-owned businesses in the redevelopment of the Island.

Any redevelopment on Rikers Island is, of course, dependent on the timing and successful implementation of the criminal justice reforms detailed in the previous chapters, specifically the reduction of the current jail population to approximately 5,000 people, the closure of the jail facilities on Rikers, and the relocation of the remaining jail population into modernized, smaller, community-based facilities.

Background

Beginning in 1664, Rikers Island was privately owned by the Rycken family, Dutch settlers, who later changed their surname to Riker. Over many generations, the Rikers amassed a fortune, in no small part through the use of slave labor.²²² In the early 1800s, Richard Riker served as New York City's Recorder and was specifically responsible for transporting to the South fugitive slaves, as well as kidnapped free Blacks.²²³



Historical Map of Island (1890)

The Rikers family eventually sold the Island to New York City in 1884. At the time of purchase, the Island comprised about 90 acres of low hills and marshy land. Once purchased, the City began expanding Rikers Island, using it as a landfill for New York City's waste. Much of the material was derived from subway construction, municipal refuse, and ash from coal heating and incinerators. Filling continued until about 1943, expanding the Island to its current size.²²⁴ Jail facilities have continuously operated on the Island since 1932.

The New York City Department of Correction is charged with overseeing and operating Rikers Island. The Department has treated the entire Island as a correctional facility, altering its landscape and constructing new facilities on an as-needed basis. While there are currently nine operating jails, the Island is considered a single site. There are no City "mapped" streets on the Island; streets, sewer, water, and electricity infrastructure are generally maintained by the Department of Correction or are subject to unique agreements with utility companies.

Originally, detainees were transferred by ferry from the Bronx; as a result, the Island is technically part of the Borough of the Bronx. In the late 1960s, the Rikers Island Bridge, now the Francis R. Buono Memorial Bridge was constructed to connect the Island to Queens, placing the Island under the jurisdiction of Community Board 1 in Queens. Rikers Island is a single tax and zoning lot; it is zoned C8-2, in which jails are a permitted use (Group 8D), and has a Floor Area Ratio of 2.0.

Our Approach

In weighing both the possibilities and the challenges presented by redeveloping Rikers Island, The Commission sought to develop a “conceptual master plan”—a vision for long-term redevelopment that identifies feasible opportunities for reuse based on unique physical and geographical conditions, economic and social contexts, and political realities.



Study Process

New York City is no stranger to large-scale planning and redevelopment projects. The most successful among them share a common approach: a master plan with public and civic purposes at its core; an understanding of the needs and goals of stakeholders; a balance between public and private roles; an analysis of the benefits, challenges, and impacts; and a plan for potential phasing and implementation. Large-scale master plan projects typically originate in one decade and are realized many decades later. Inevitably, these plans are modified over time to account for new needs, shifting industry trends, or changes in conditions. The proposed reuse alternatives outlined in this chapter are meant to illustrate feasible uses; they are not intended to advance construction design or any public review procedures.

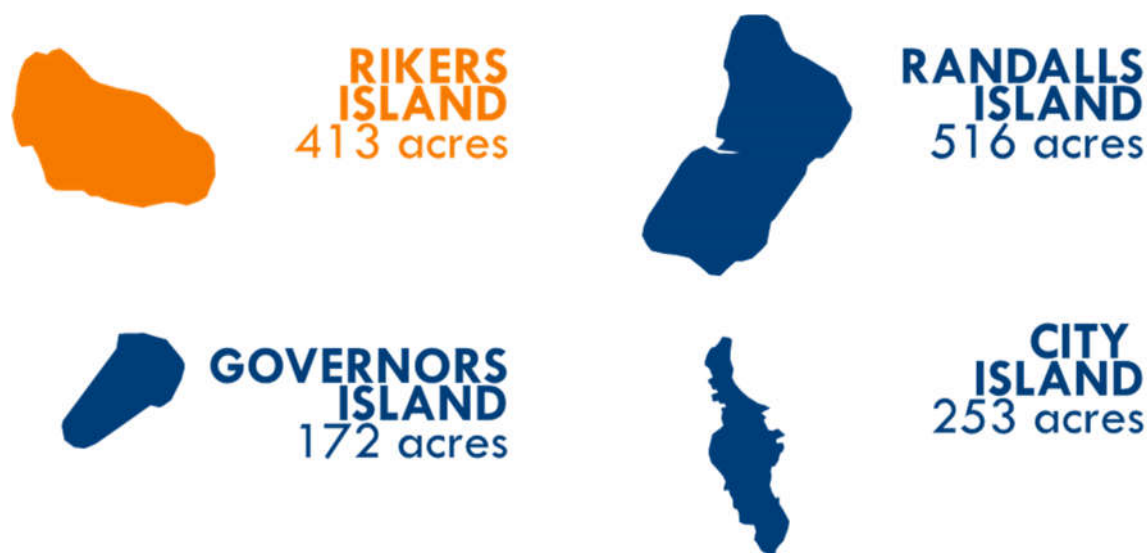
To help us in our deliberations, the Commission assembled a team of professionals in the fields of large-scale master planning, economic analysis, transportation planning, and civil, aviation, environmental, and geotechnical engineering, among others. The team, led by HR&A Advisors with close support by FXFowle Architects and Stantec, was tasked with identifying uses that would be physically feasible on the Island, identifying costs and benefits, and developing conceptual plans for Island redevelopment.

The Commission recognized from the outset that there are many stakeholders invested in and affected by the future of Rikers Island. The general New York City population, nearby residents, Rikers detainees, their families and communities, various governmental entities, and many other private and public actors all have a stake in the future of the Island. Developing a viable reuse plan for land of this size, with the unique restrictions and complications of Rikers, requires community buy-in, industry expertise, and public sector leadership.

Because of these realities and challenges, the Commission made a concerted effort to reach out to a broad array of stakeholders to gain feedback and input, and regularly followed up with government and industry leaders and other subject matter experts. Equally important, the Commission sought feedback and input from individual New Yorkers throughout its process. During its research, the Commission held roundtables, clergy breakfasts, charrettes, and other meetings throughout the City to solicit public input. This is only the beginning of the public outreach process, and deep engagement around community needs and priorities must continue to be a vital component of any future redevelopment process.

Based on analysis of the Island's existing conditions, our outreach to stakeholders, and an assessment of long-term needs and priorities for the City, the Commission identified the following opportunities and challenges:

- **Any redevelopment plan must recognize Rikers' unique history.** For nearly a century, Rikers has been an open wound, placing thousands of New Yorkers, both detainees and correction officers, in conditions that were substandard at best and inhumane at worst. We cannot undo this history. But we can acknowledge it and attempt to make some amends.
- **The Island's size and location offer unique opportunities.** At 413 acres (more than two and a half times the size of Governors Island), the Island can physically accommodate a wide variety of uses and presents a rare opportunity in a land-constrained city such as New York to site large-scale facilities, including those that are difficult to site due to neighborhood adjacency. The Island's location and comprehensive utility network support integration into existing water, sewer, waste, and power systems. The Island's elevation, with the majority outside the 100-year and 500-year floodplains, can support resilience to climate change for new facilities.

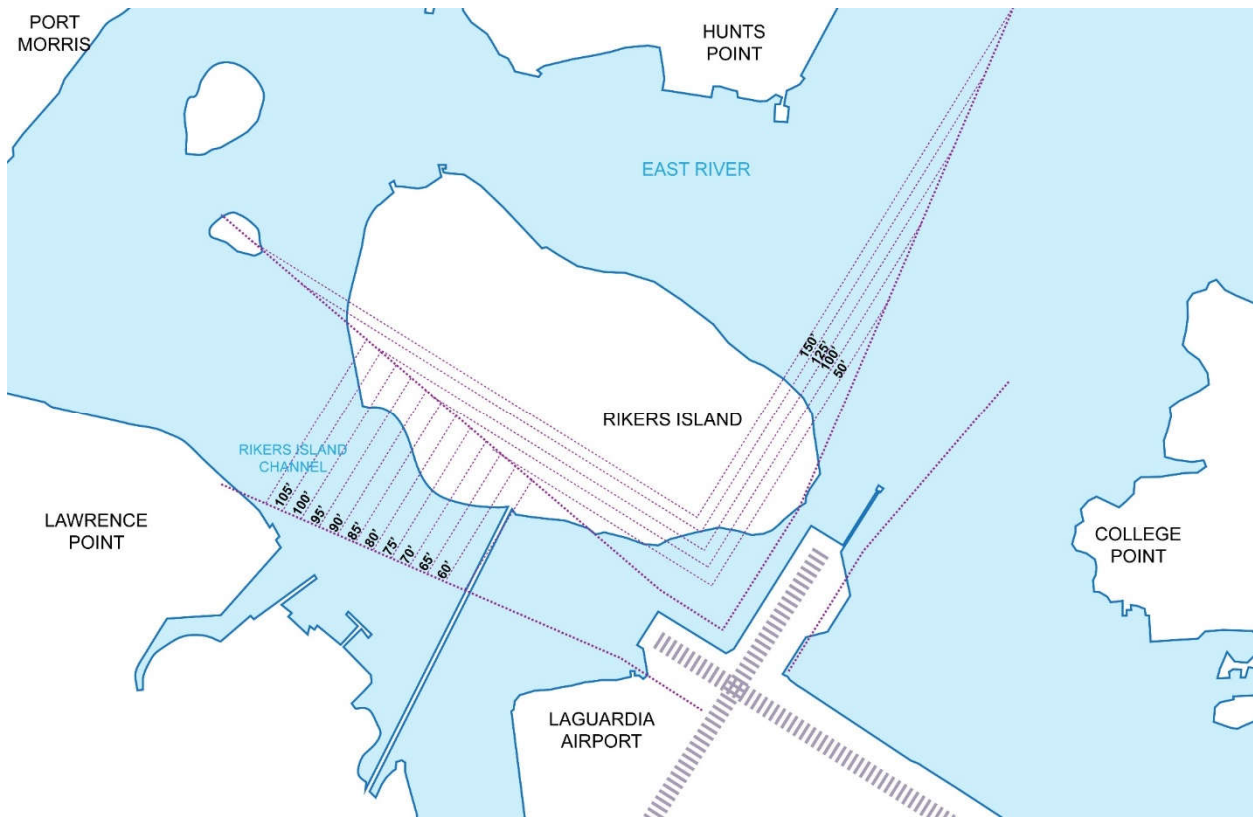


Island Size

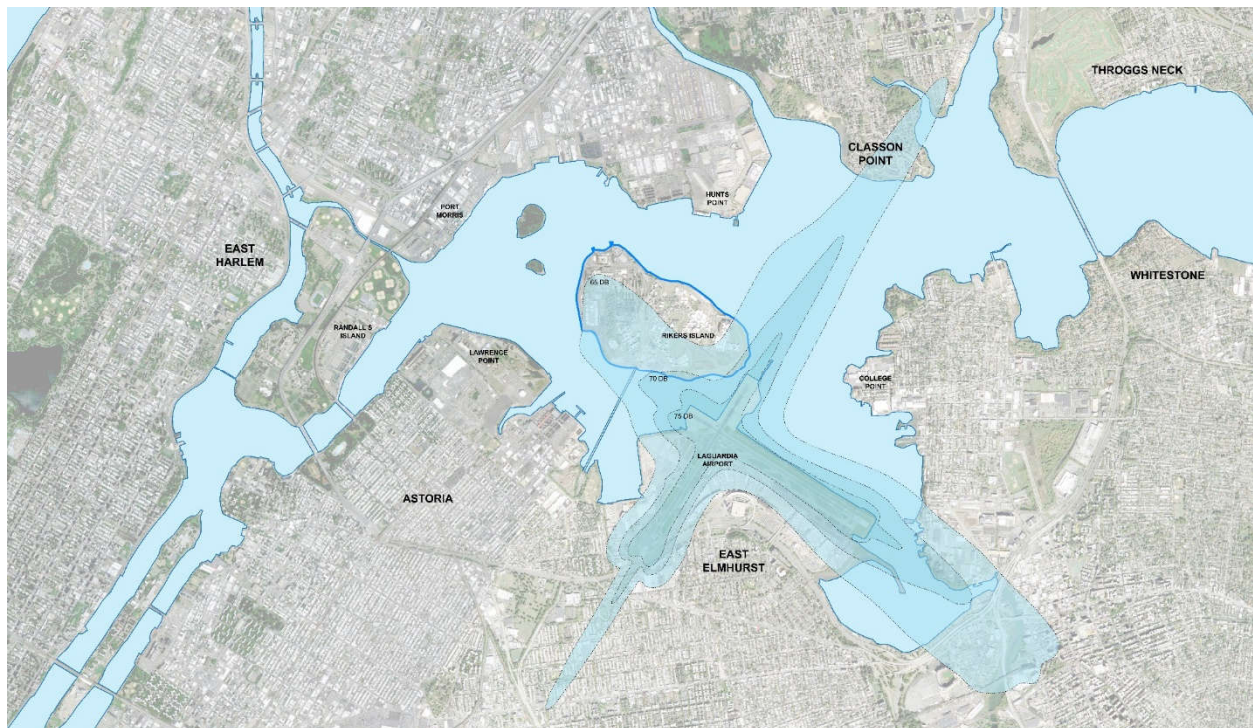


100-Year (Gray) and 500-Year (Dark Blue) Floodplains

- **Proximity to LaGuardia creates and constrains redevelopment options.** Being next door to LaGuardia presents a rare opportunity to improve operations at one of the nation's most challenged airports and to meet the region's need for additional flight capacity. The same proximity dampens the potential value of other uses, including housing, hospitality, health care, and recreation, due to maximum height limits of 145 to 150 feet across the Island (approximately the equivalent of a 15-story building) and elevated noise levels. The portions of the Island closest to LaGuardia's runways are limited to lower heights and subject to greater noise, limiting density in the southwestern and far eastern portions of the Island.

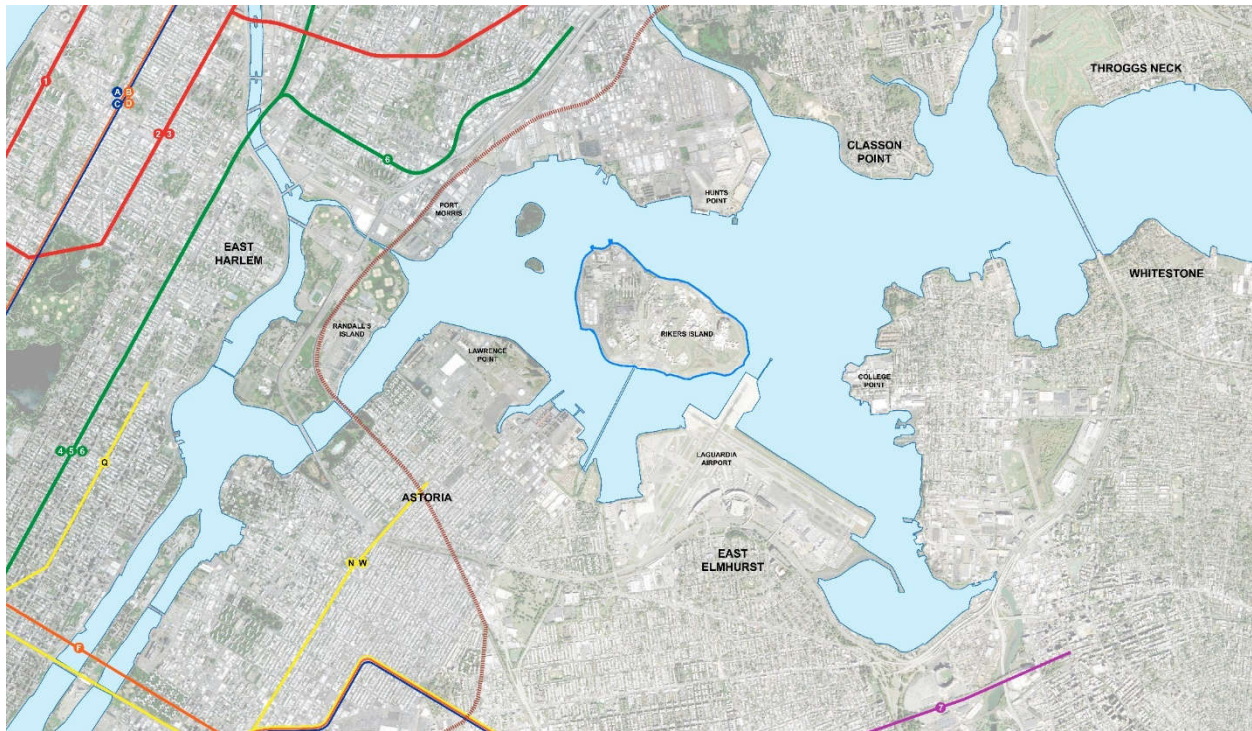


Height Limitations due to LaGuardia Airport



Noise Impacts from LaGuardia Airport

- **Transportation is a key limiting factor for redevelopment.** Any major residential, commercial, or institutional development would require new transit connections, and any large-scale industrial use would require improved highway access. Currently, the Buono Bridge has three lanes, with access controlled by the Department of Correction. A single bus route, the Q100, serves the Island; the closest subway station is two and a half miles away. Transportation enhancements carry high costs, and options are limited by available rights of way and traffic impacts. The most suitable future use of the Island would benefit from the Island's relative isolation rather than try to overcome it.



Existing and Proposed Transit Lines

- **Redevelopment costs will be atypically high.** Deep bedrock, weak soil, and methane deposits resulting from the history of fill on the Island will require construction methods that increase building costs, especially for people-intensive uses such as residential, office, or retail development, and especially in the eastern portion of the Island, where the fill is newer and has not fully settled. Demolition of detention facilities, due to likely asbestos and lead contamination in older buildings and construction techniques, will be costlier and take longer than in typical circumstances. Feasible uses must be able to offset these extraordinary costs with tangible public benefits.
- **Phased redevelopment would ideally begin in the west.** The Island's oldest correctional facilities, which also tend to be the least flexible in terms of their capacity to house various detainee populations, are located at the west of the Island, suggesting a preferred phasing strategy that begins west and moves eastward. The western and northern portions of the Island also feature the least restrictive height limits, better soil quality, and lower noise levels.

In all, the Commission considered more than 30 distinct uses for the Island. Based on the observations above, we then narrowed the list to several focused scenarios and assessed the feasibility, costs, and public benefits of each, resulting in one preferred vision.

Equitable Growth in a Global City

New York City added more than 400,000 residents between 2000 and 2015. The City's population is expected to grow by an additional 600,000 people by 2040.²²⁵ This growth presents a major opportunity for New Yorkers, but also a set of challenges that must be confronted.

In 2015, the City of New York released its plan to address the City's long-term equity, sustainability, and resiliency challenges. Titled "One New York: The Plan for a Strong and Just City," the plan set forth a number of goals that are relevant to the future of Rikers Island. In addition, the State of New York has launched major initiatives to reconstruct the region's aging infrastructure and modernize the energy network that powers the City.

City and State priorities of relevance to the redevelopment of Rikers Island include:

- **Growth.** The City plans to add 700,000 jobs by 2040, focusing on traditional sectors such as finance, entertainment, and higher education, as well as growth sectors such as advanced manufacturing, clean tech, biotech, and life sciences. To support this growth, as of 2015 the City and regional agencies had budgeted approximately \$266 billion in capital spending through 2024, including billions of dollars in planned spending by the State on road and aviation infrastructure. Over \$7 billion has been committed by the Port Authority of New York and New Jersey to improvements at LaGuardia and JFK Airports through 2026.
- **Equity.** The City plans to add up to 660,000 new housing units by 2040, including creating and preserving 200,000 affordable units by 2025, with the aim of reducing the number of rent-burdened New Yorkers, approximately 56 percent of the City's population²²⁶. In addition, the City is committed to expanding access to quality employment by training workers to participate in growing industries, creating industry partnerships, increasing the living wage, and promoting opportunities for formerly incarcerated residents.
- **Sustainability.** The City intends to reduce greenhouse gas (GHG) emissions by 80 percent by 2050 (the 80x50 goal) and increase the combined sewer overflow (CSO) capture rate, improving environmental quality and the City's capacity to withstand extreme weather events. Supporting initiatives include elimination of all waste sent to landfills (the Zero Waste goal) and production of 1,000 megawatts of solar energy by 2030. Similarly, the State's energy plan commits to generating 50 percent of all electricity from renewable sources, including solar, wind, and hydropower by 2030.
- **Resiliency.** In the wake of Superstorm Sandy, the City has identified more than \$20 billion in projects to rebuild impacted areas and reduce climate risks to New York

communities. Forward-looking investments include more than \$2.5 billion to harden critical utility and infrastructure facilities and an equal amount to develop green infrastructure that will address future risks from flooding and storm surge.

Reimagining Rikers Island

The Commission believes that Rikers Island represents a singular opportunity to plan for the future of New York City. The Island could accommodate an expanded LaGuardia Airport that could serve as many as 12 million more passengers annually. It could be a base for energy infrastructure that would power nearly 30,000 homes and support a broader renewables network. And it could house critical environmental infrastructure that would greatly reduce landfill waste and help divert hundreds of millions of gallons of untreated water from our waterways. These uses could generate \$7.5 billion of annual economic activity and more than 50,000 jobs. Further, relocating existing public facilities to the Island could free up sites for redevelopment, generating more public benefits in the form of new jobs, housing, open space, or other public uses.

LaGuardia Airport Expansion

The problems of the three major airports serving New York City are no secret. These antiquated facilities suffer from worst-in-the-nation delays and generally fail to reflect New York's stature to residents or visitors. Spearheaded by the State through the Port Authority of New York and New Jersey and other agencies, major improvements are underway, including ambitious projects to modernize terminals and improve transportation to JFK and LaGuardia, as well as to Newark. However, New York's major airports are currently at full capacity, and regional planners anticipate nearly 40 million passengers will go un-served by 2030 at a cost of \$17 billion in annual economic activity.²²⁷ Even with recent funding commitments, the expected increase in passenger demand and the need to reduce delays will require the construction of one or more new runways—a prospect that is extremely challenging at all three airports.

Rikers Island is strategically positioned to accommodate a third runway for LaGuardia Airport, as well as a new, modern terminal that could increase capacity by an estimated 12 million passengers annually (or an additional 40 percent over existing LaGuardia capacity) and improve the regional air network. The new runway would be located on the northern half of the Island and connect to the existing airport by taxiways built on overwater platforms, much like the existing runways. Built at 20 to 25 feet above sea level, a new runway on the Island would be the highest elevation among the three major airports and bolster the resilience of the regional system. A new terminal could be located on the footprint of the existing airport, connected to the historic Marine Air Terminal building, to create seamless passenger and vehicular connections with minimal traffic impacts to the surrounding residential neighborhoods and ensure ongoing use of a historically significant asset. An extension of the planned LaGuardia AirTrain would connect the new terminal to the other LaGuardia terminals and to subway and commuter rail connections at Willets Point in Queens, further leveraging the State's recent investments.

This opportunity is not without challenges. Aviation experts have reviewed the physical viability of the construction and operations of a new runway and terminal at LaGuardia, but a key barrier to any increase in flights in the region is the crowding that occurs in the City's airspace, which is among the busiest and most complicated in the country. Planned improvements in air navigation

systems by the federal government known as “NextGen” are expected to trigger a rethinking of regulations governing airspace around New York City, which will present an opportunity to accommodate added capacity at LaGuardia. Building a new runway would also create environmental impacts in the waters surrounding Rikers that would need to be addressed. Noise impacts will need to be studied further, but are not expected to be significant: because the additional runway would run in an east-west orientation, takeoffs and landings will largely fly over water bodies and industrial zones rather than nearby residential neighborhoods, minimizing noise impacts.

A detailed cost-benefit analysis of this scenario follows, but the airport expansion would grow the local economy by creating thousands of new permanent jobs both on and off the airport. In addition, a new state-of-the-art terminal would provide a completely updated travel experience in line with other planned improvements at LaGuardia, benefitting millions of local residents as well as the millions of visitors who pass through New York City annually.

Critical Infrastructure

New York City is supported by a complex network of tunnels, cables, and routes that are responsible for transporting the City’s water, power, waste—and people—through the streets, rivers, and skies. While most New Yorkers have minimal direct interaction with this network, it is vital to the City’s operations and its growth. Unfortunately, much of our infrastructure was built in the first half of the last century or earlier, and is therefore antiquated and in need of costly upgrades. Moreover, our existing infrastructure is ill-equipped to meet the City’s goals and mandates to reduce climate impacts and provide cleaner air and water. Rikers Island can support critical improvements to the City’s vast infrastructure in several areas:

Waste

The City’s Department of Sanitation collects more than 3 million tons of waste from households and institutions each year. About two-thirds ends up in landfills as far away as Virginia and Ohio. Between the truck exhaust from hauling waste and the methane released during decomposition, the City’s waste system contributes dramatically to its climate impacts. Improvements are crucial to the City’s plans to reduce greenhouse gas emissions. In fact, the City has committed to sending zero waste to landfills by 2030, an ambitious goal that will require new policies and investments including increased recycling rates and reduced use of non-recyclable materials such as styrofoam.

Realizing the goal of zero waste will also require constructing two new facilities that have historically been difficult to site: 1) a composting facility that can handle some of the estimated 1.2 million annual tons of food scraps and yard waste we send to landfills, and 2) an energy-from-waste facility that can convert the 20 to 30 percent of City waste that cannot be recycled or otherwise repurposed into electricity or gas.

Rikers Island presents a compelling solution to this siting challenge. It already houses a small composting facility and could accommodate a larger, more modern facility that could process up to 1,000 tons of organic waste per day, equivalent to the total expected load from Manhattan, Brooklyn, and Queens. An energy-from-waste facility on the Island could process as much as

2,000 tons per day of otherwise un-disposable waste, making use of emerging clean technologies that reduce the environmental impacts traditionally associated with waste-to-energy uses and providing a critical resource for the City's Zero Waste goals.

Siting waste facilities on Rikers Island converts its physical characteristics from challenges into strengths. Both organic and standard waste could be transported to the Island by barge from marine transfer stations, thereby reducing truck traffic, preventing adverse impacts on surrounding communities, and supporting the movement to shift the method of moving freight from long-haul trucking to more environmentally friendly marine transport. These shifts in waste management practices made possible by siting facilities on Rikers would also contribute up to \$65 million in annual operating savings for the City. In addition, output generated by the composting facility would include high- to low-grade soil that could be sold locally or regionally, and output from the energy-from-waste facility could include electricity or gas products able to help the City further address its GHG reduction targets.

Water

New York City, like many older cities, is predominantly served by a combined sewer system, in which the tunnels and pipes that collect wastewater from homes and other buildings also collect rainwater and melted snow. In periods of heavy rain or snow, the excess flow can exceed the capacity of the network, resulting in discharge of untreated wastewater into the city's waterways. This is known as combined sewer overflow, and despite significant investments since the 1980s, the City still discharges 27 billion gallons of untreated water annually,²²⁸ prompting legal settlements with both the federal government and the State's Department of Environmental Conservation mandating reduction in overflows. In response, the City's Department of Environmental Protection (DEP) has budgeted billions of dollars to upgrade its network of wastewater treatment plants and build new tunnels and facilities that will capture and store overflow before it enters the city's waterways. Priority cleanup areas include Flushing Bay, adjacent to Rikers Island.

Rikers is able to house a number of facilities that could help the City improve local water quality faster and at lower cost. Rikers is of a sufficient size to house a new wastewater treatment plant that could replace the four existing facilities that treat wastewater and stormwater from nearly all of the Bronx, upper Manhattan, and northern Queens—a total of 40 percent of the City's capacity. Three of the four facilities, all in close proximity to the Island, will reach their 100th year by 2040 and need major reconstruction. While adding incremental capital costs to the expected long-term plan for plant upgrades, siting a new plant on Rikers would allow for a seamless phase-out of existing facilities, improve treatment capacity and efficiency, and generate an estimated \$10 million of annual operating savings. It would also open up the current facility sites for redevelopment, which could generate additional public benefits in the form of new jobs, housing, open space, or other DEP uses, such as "wet weather facilities," which specialize in treating stormwater from nearby watersheds and reduce the amount of overflow. On Rikers, a likely complement to the treatment plant would be anaerobic digesters, which break down organic waste into biogas that can be used to generate electricity or heat for more than 5,000 households.

Energy

As the City and State set out to reduce GHG emissions by 80 percent by 2050, with interim plans of reducing emissions by 40 percent by 2030, a critical component will be increasing the percentage of electricity produced from renewable sources such as solar, wind, and hydropower. New York State's Clean Energy Standard Mandate requires 50 percent of electricity to be generated from renewable sources by 2030, and New York City has a target of generating at least 1,000 megawatts of daily solar capacity by 2030—enough to power 250,000 households. Key challenges to the City's and State's goals include limited land area within New York City for large-scale generation and the intermittent nature of renewable energy production, which creates an imbalance between when power is needed and when it is available.

Rikers Island presents an opportunity to address both challenges by providing open land area for a large-scale solar energy installation and a strategic site for an energy storage system. While both solar arrays and battery storage are modular technologies that could exist at a range of sizes on Rikers Island, in consideration of other potential uses, the estimated high-end capacity that could be sited is approximately 90 megawatts of solar production—enough to power nearly 25,000 households—and 300 megawatts of energy storage. Growing the City's solar capacity would reduce its reliance on fossil fuel-producing power plants. The ability to efficiently store power generated by renewable sources would also help eliminate the need to build and run expensive conventional power plants to meet peak demand.

Other Compatible Uses

City and regional priorities are constantly adapting, subject to emerging technologies and changing environmental and economic conditions. With 413 acres, the Island can support a wide array of potential complementary uses, including technologies still proving their viability. These might include commercial urban agriculture facilities that offer green collar job training or distribution centers for advancing technologies such as autonomous vehicles or drones.

Complementing next-generation infrastructure uses, the Island could support research and development or academic uses that could make the Island a living laboratory. For example, an academic and research center, developed by an interested institution such as the City University of New York (CUNY), could offer training and education to advance scientific research, and harness on-site technologies to advance innovations in energy production, waste and water management, and food uses, or offer other educational programs conducive to the more isolated environment of the Island.

Finally, if infrastructure uses are found to be compatible neighbors, a greenway along portions of the waterfront could offer public access to a new swath of the City while enhancing edge protections to preserve the Island's climate resiliency. With access over the Buono Bridge, the open space could support bicycle and walking trails, providing unregulated public access to Rikers Island for the first time and creating a truly unique setting for active recreation.

Ultimately, the City and other stakeholders will determine the appropriate uses to locate on the Island in response to evolving needs.

Design Concepts

The vision for an island addressing New York City’s critical infrastructure needs can take many shapes, and will necessarily evolve with future needs and priorities. To advance this conversation, the Commission developed two design concepts to highlight how potential uses might be co-located on the Island, as well as the range of benefits and costs associated with redevelopment. These concepts are meant to illustrate, rather than prescribe, potential uses on the Island. The two concepts are:

Concept 1: A third runway and new terminal at LaGuardia Airport would enable significant regional benefits, co-located with much-needed water and waste facilities.

Concept 2: Next-generation water, waste, and renewable energy uses, co-located with a research center and an urban agriculture center, would advance key sustainability and resiliency goals and support new green industries.

Concept 1

Concept 1 proposes a third runway and new terminal for LaGuardia Airport, wastewater treatment facilities, a large-scale composting facility, a 20-acre solar field, and a public greenway and memorial.

Third Runway

Positioned on the northern half of the Island to minimize environmental and noise impacts, a new runway could expand flight capacity at LaGuardia by 40 percent. New platforms over the water would link the runway to existing operations.

New Terminal

A 1.5 million-square-foot modern terminal could accommodate 12 million additional passengers annually. It would also transform the LaGuardia experience. Connected to the existing historic Marine Air Terminal building, the terminal would require overwater construction in Flushing Bay.

AirTrain Extension

The terminal would be accessible through an extension of the planned LaGuardia AirTrain to Willets Point, connecting the terminal to the existing terminals as well as subway and commuter rail lines in Flushing. Extension of the AirTrain would require a 1.5-mile spur from the site of the new Central Terminal.

Water Treatment Facilities

The Island could serve a variety of wastewater and stormwater treatment uses that would improve water quality in New York, such as a consolidated wastewater treatment plant to replace up to four nearby facilities that are reaching the end of their useful life.

Composting Facility

A 25-acre indoor composting facility on the western edge of the Island would process 1,000 tons of organic waste per day, or all expected organic collections from Manhattan, Queens, and Brooklyn. Waste would travel to the Island by barge from marine transfer stations in the same three boroughs to a new barge facility on site, minimizing truck traffic and air quality impacts.

Solar Field

A 20-acre solar field, together with solar panels on the roofs of the composting and water treatment facilities, could power more than 10,000 households.

Public Greenway

A greenway along portions of the waterfront could accommodate public access via the Buono Bridge.

Memorial

A physical marker located in public space along the waterfront could be incorporated into the design of both concepts to acknowledge the suffering and pain associated with Rikers Island and support the process of healing for communities.

Concept 2

Concept 2 proposes wastewater treatment facilities and a large-scale composting facility, in addition to a large-scale energy-from-waste facility, a 115-acre solar field, a power storage facility, urban agriculture, a research campus, and a public greenway and memorial.

Water Treatment Facilities and Composting Facility

The Island would be able to accommodate a variety of wastewater and stormwater treatment uses that can support the City's clean water goals, and a 25-acre composting facility on the Island, processing 1,000 tons of organic materials per day.

Energy-from-Waste Facility

At 40 acres, a modern energy-from-waste facility could process 2,000 tons of waste per day; this concept proposes one of the largest waste-to-energy facilities in North America that can help the City to achieve Zero Waste. As with the composting facility, all waste would arrive to the Island via the new barge facility, minimizing traffic and air quality impacts.

Solar Field

An enlarged solar field, along with additional panels installed on compatible facilities, could power nearly 25,000 households—close to 10 percent of the City's target for solar capacity by 2030.

Power Storage

An 18-acre facility on Rikers Island could store approximately 300 megawatts of power.

Urban Agriculture

With 13 acres of space, an urban farm on Rikers Island would be one of the largest in the City, with the ability to scale commercial food production and accommodate a variety of food production techniques.

Academic and Research Center

A 400,000-square-foot center could be developed by an institution such as CUNY to provide training, education, and research centered around innovative energy production, waste and water management, and food uses, and serve as a testing lab for researchers, scientists, and students.

Public Greenway

A greenway encircling portions of the Island, with access over the Buono Bridge, would support bicycle and pedestrian access to the Island.

Memorial

A physical marker is a critical piece of both concepts to acknowledge the suffering and pain associated with Rikers Island and to support the process of healing for communities.

Cost-Benefit Analysis

Benefits






Each of the two redevelopment concepts presents significant benefits for the City and the region, including job creation, economic growth, reductions in greenhouse gas emissions, and improved water and air quality. These benefits inure to all New Yorkers but are especially important in addressing the needs of the people and communities that have experienced the most harm in relation to the jail system on Rikers.

The largest economic benefit is associated with the expansion of LaGuardia Airport, which generates benefits both through jobs supporting the aviation industry on and off the airport, as well as benefits from increased passenger throughput to the City and region. The new runway and terminal could generate up to \$7.5 billion in total annual economic activity, including up to \$4.3 billion from airport operations and employee spending, and up to \$3.2 billion generated through new visitor spending and spin-off effects. An airport expansion would create up to 52,000 new jobs. Of these, roughly half would be generated through increased airport operations, and the other half through visitor spending in a variety of industries across the city and region.

In the concept without an airport expansion, uses would generate an estimated \$340 million in annual economic activity, as well 1,500 jobs. Not included in these totals are the impacts of modernizing critical pieces of the City's infrastructure network, which, while difficult to quantify, are critical in enabling future growth in population and economic activity. Further, redevelopment schemes that include a new wastewater treatment facility would allow the City to decommission up to four existing plants in the surrounding area, freeing up land to meet other City needs such as affordable housing, job creation, public open space, and other infrastructure.

Redeveloping Rikers Island in the ways we have described above would significantly advance the City and State's sustainability and resiliency goals by helping divert up to 40 percent of

current landfill waste and replace aging facilities to improve overall water quality, and generating and storing renewable energy. In total, the concepts would have benefits equivalent to taking more than 150,000 cars off the road and powering up to 30,000 households with renewable energy. These uses would generate annual cost savings for the City of up to \$75 million from improved water treatment and sanitation uses, not including any revenue or other benefits from the re-use of existing water treatment sites.

	Concept 1	Concept 2
Economic Benefits		
 Annual Economic Activity	\$7.5B	\$340M
 Permanent Jobs	52,000	1,500
Environmental Benefits		
 Renewable Energy Generated (Equivalent to households powered)	20,000 households	30,000 households
 % to Zero Waste Goals	15%	40%
 Greenhouse Gas Emissions (Equivalent to cars taken off the road)	65,000 cars	150,000 cars

Total Project Benefits

It is also important to note that this new infrastructure would be built to withstand changing climate conditions. In a post-Superstorm Sandy New York, the potential to lose billions of dollars of investment and infrastructure is very real. Projects on Rikers would be situated outside of the 100-year and 500-year floodplains, making them more reliable during extreme weather.

There are several ways redevelopment can help address the Island's past and present harms. Airports are generators of accessible and well-paying jobs. More than 80 percent of the nearly 10,000 direct jobs created at LaGuardia Airport and in aviation support industries are accessible with only a high school diploma, including 20 percent that require no formal education. Mean hourly wages for jobs that do not require postsecondary education are over \$17, exceeding living wage standards for New York City. These jobs include ticket agents, freight and materials movers, security guards, cargo agents, retail and restaurant workers, and government employees. Creating dedicated career and job training and placement programs for formerly incarcerated individuals and for those in communities most harmed by Rikers should be a top priority.

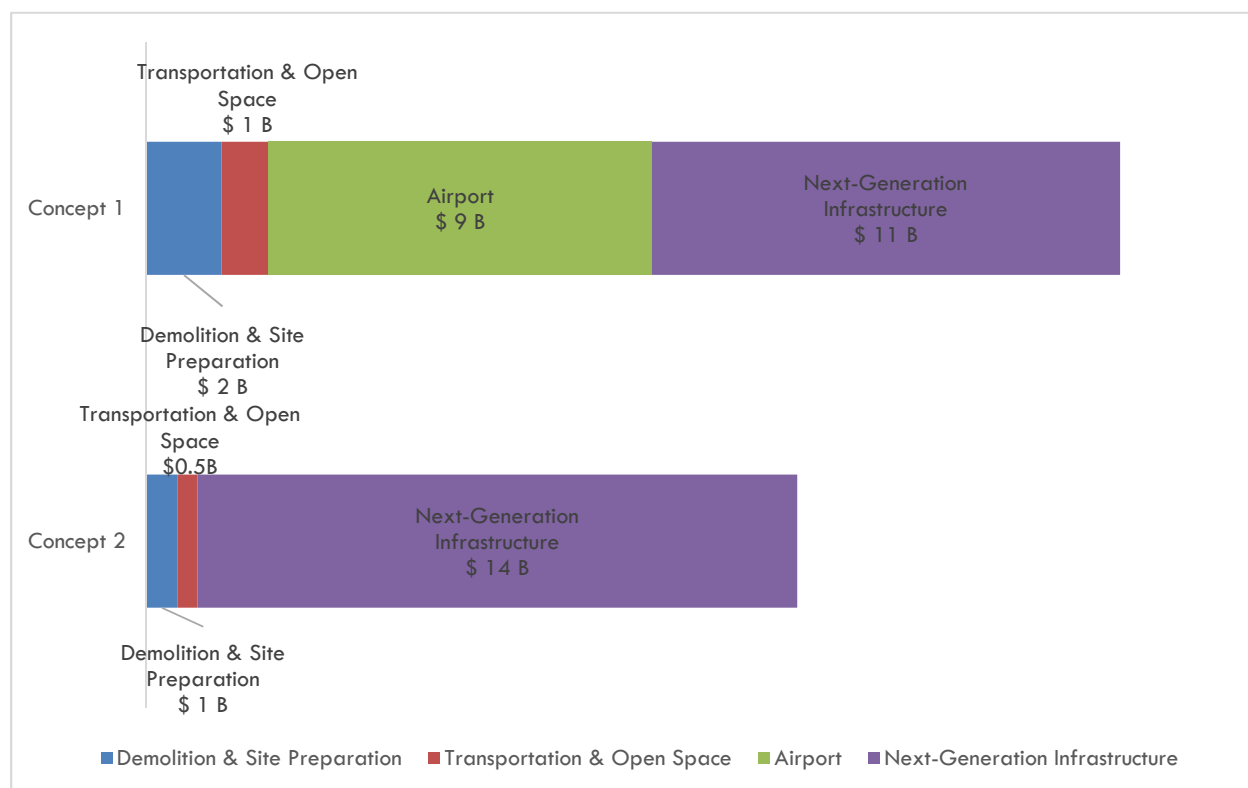
In addition to airport employment opportunities, Concept 1 would generate 120,000 construction "job-years" (a 10-year project requiring 100 workers a year creates 1,000 job-years), and Concept 2 would generate 80,000 job-years, opening additional opportunities within the construction industry. These jobs would have average wages of \$74,000 per year. Given that much of the construction effort would be implemented through City and other public agencies,

contracts would include significant requirements for use of Minority- and Women-Owned Business Enterprises and other firms whose participation is intended to support asset creation in historically underserved communities.

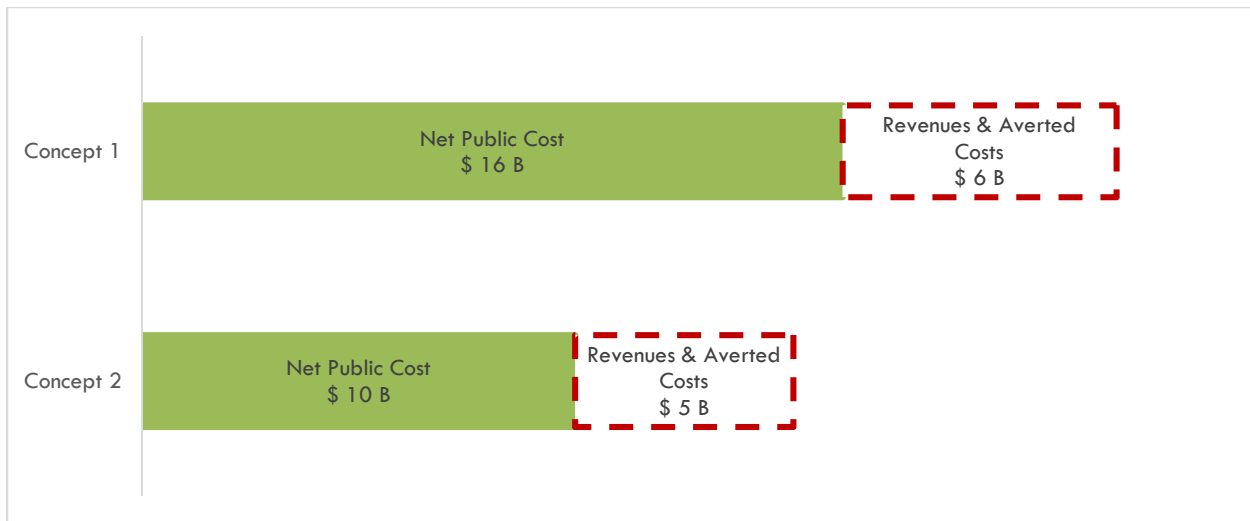
Costs

The redevelopment of Rikers Island will carry significant costs and complexity. For the two concepts above, many of the proposed uses address critical needs that will require planning and capital budget commitments from the City and other public entities in the coming years, whether or not Rikers is the site of such improvements.

The total cost of the concepts detailed above is estimated to range from \$15 billion to \$22 billion,²²⁹ including the substantial costs of demolishing existing facilities and reshaping Rikers to accommodate new uses. Not all costs would be incremental costs to the public, however. Several uses, including the airport expansion, energy uses, and potentially waste facilities, would attract investment from private sources, estimated at \$1 to 2 billion. Other uses, including the new wastewater treatment plant, would avert at least \$3 billion, but likely significantly more, of capital spending that DEP would otherwise need to allocate to reconstruction of existing plants and other improvements. Thus, the estimated incremental cost to the public is approximately \$11 billion to \$17 billion.²³⁰



Total Project Costs by Category



Total Project Costs by Funding Source

While these costs may seem high, they represent approximately 5 percent of the total 10-year spending budget for regional public agencies. In the context of essential regional infrastructure projects, it is an amount consistent with the cost of complex infrastructure projects, and proposed uses would drive considerable new revenue for the region; future regional tax revenues from the LaGuardia expansion, for example, including from associated visitor spending, are estimated at up to \$450 million annually, or \$8 billion in present value over 30 years. City operating budget savings from water- and waste-related uses are estimated at up to \$75 million annually, or \$1.4 billion in present value over 30 years. These costs must also be viewed in the context of the significant quantifiable and unquantifiable benefits of supporting the City's existing and growing population and meeting the needs of future generations.

Discussion Point: Mixed-Use Development on Rikers Island

As a reuse option, several stakeholders proposed a mixed-use neighborhood including housing, retail, offices, education or health institutional uses, and open space. The Commission and its planning team studied this option at length, primarily because of the potential to site new affordable housing and an anchor academic or other institution that could generate well-paying jobs. Several key challenges make this use difficult to achieve:

- Height restrictions and noise due to proximity to the airport and distance from population centers would limit rents for new housing and the total amount that could be built. The Island's deep bedrock, methane deposits, and noise levels would increase building costs to nearly twice the typical cost. Thus, it is unlikely that any new development would be financially feasible without extraordinary public subsidy.
- While the City or State could provide subsidy to support development, and set aside new apartments as affordable housing, the amount of subsidy needed would be higher than nearly anywhere else in the City: the subsidy required for each affordable apartment on Rikers Island could instead fund almost three typical affordable apartments elsewhere. Additional costs of a new mixed-use community, in the form of government investment in schools, public safety, and similar amenities, would increase public costs further.

- Finally, introducing any substantial new population to the Island for a residential or mixed-use development would require major investments in transportation, including new ferry terminals, one or more new bridges, and ideally an extension of an existing subway line or other mass transit line. The costs required to bring transit to the Island, including the physical constraints to extending subway access, greatly increase the amount of subsidy required to support affordable housing, well beyond what the City typically provides.

Despite the environmental challenges and outsized investment required, the Island has the potential to house thousands of affordable or mixed-income apartments and to support a home for a significant institutional or commercial use. Therefore, if there were a substantial commitment and funds dedicated to extending mass transit to the Island and if a major institutional or commercial anchor were identified, such as CUNY, the option of a mixed-use neighborhood may be appropriate for further study.

Achieving the Vision



Project Timeline

A redevelopment project of the scale and complexity described above will require coordination among numerous City, State, Federal, and private sector entities, and would be preceded by a lengthy period of site planning, public engagement, environmental review, and land use and other approvals. Important considerations for the next stage of planning include, but are not limited to: 1) identifying a lead entity or entities to manage the Island's transformation through planning, environmental and public review and approvals, and development; 2) creating a detailed plan that phases the depopulation and demolition of the jail facilities, the preparation and remediation of the Island, and the development of new uses, while minimizing and mitigating the impacts of overwater construction and any traffic or noise impacts related to the potential expansion of LaGuardia Airport; and 3) developing a funding and partnership strategy to make the greatest use of private investment and value capture.

As noted earlier, committing to a new vision for the Island does not lessen the immediate need to create more humane conditions for detainees and corrections officers at Rikers facilities today. Similarly, the continued use of the Island for correction use in the near term should not delay planning for the future. Nearly all proposed uses will require a minimum of five years, and as many as 10 years, of advanced planning, design, and approvals before shovels enter the ground. The Commission envisions this pre-development work proceeding parallel to the legislative and administrative actions outlined in earlier chapters.

Moving Forward

On the proceeding pages, we have attempted to articulate a vision for a more just and more effective criminal justice system in New York City—as well as a roadmap for how to achieve it.

Even as we look to the future, it is necessary to acknowledge the history of Rikers Island and the heavy mark it has left on our City. While we cannot undo the damage, we can act now to repair and to honor those most affected.

Acknowledging that the profound harms of Rikers Island have been disproportionately concentrated in a small number of neighborhoods—including Central Brooklyn, the South Bronx, and upper Manhattan—the Commission recommends making tangible investments where past damage has been greatest. This could include prevention programs for youth; job placement services; and a range of economic development strategies, including affordable housing, parks and recreation, and greater access to credit for local businesses.

Another way to remember what happened on the Island is to build a memorial and/or museum that would honor the men and women whose lives were affected by their time on Rikers. This would include both those who have been jailed on the Island and those who have worked on the Island. The goal would be to document a specific local story (the history of Rikers) and explore themes that resonate globally (the meaning of justice). Ultimately, the effort should spark fundamental questions about what our values are, why we incarcerate, and how we can move toward a better, truer form of justice.²³¹

Finally, the name, Rikers Island, is an internationally recognized symbol of violence and brutality. If we wish to build new uses for the Island, it may make sense to complete its rebirth with a new name.

* * *

New York City stands apart from the rest of the country in many respects. We have spent the past 20 years proving that it is in fact possible to reduce both crime and incarceration at the same time. Today, we are one of the safest big cities in the country. And we have cut the jail population in half since the 1990s.

Building on these historic achievements, New York City now has another chance to be a beacon to cities around the world. Rather than resting on our laurels, we can take the next step forward. We can close Rikers Island.

The 27 members of the Independent Commission on New York City Criminal Justice and Incarceration Reform represent a variety of perspectives and professional backgrounds. We don't agree on everything. But we do agree on this: an isolated, dilapidated, and dangerous penal colony has no place in today's New York City.

We look forward to hearing your response to our recommendations—and to working with you to forge a more just New York City.

Appendix A. Our Process

Over the course of its one-year mandate, the Independent Commission on New York City Criminal Justice and Incarceration Reform engaged in a rigorous, evidence-based inquiry, which included reviewing prior literature, conducting primary research, hearing expert testimony, and holding community forums.

After convening in April 2016, the Commission assembled as a group on a monthly basis. Concurrently, the Commission organized three subcommittees, which met each month to examine relevant data, engage with leaders in the field, and explore national models and best practices. Commission meetings included presentations from a wide array of experts and stakeholders—including elected officials, City leaders, community leaders, the advocacy community, victim services providers, alternative to incarceration programs, state court officials, prosecutors, defense attorneys, and formerly incarcerated individuals and their loved ones, among others.

The Commission toured justice system facilities within and outside of New York City. Shortly after its inception, the full Commission visited Rikers Island and spent a day touring the facilities. A smaller group from the Commission also toured the Brooklyn Detention Complex and the Red Hook Community Justice Center. Beyond New York City, groups from the Commission visited Washington D.C.’s Pretrial Services Agency, the Arlington County Jail in Virginia, Westchester County Jail in New York, and the Denver County Jail in Colorado, as part of the Commission’s study of national best practices in pretrial services and jail design.

The Commission regularly convened public events to engage the broader New York City community and solicit input. The Commission hosted roundtable discussions in each of the five boroughs, offering a forum for community members to share their concerns, recommendations, and hopes for a better system of justice. In total, almost 650 New Yorkers participated in these public events.

The Commission held three breakfast events with 75 faith leaders in Brooklyn, the Bronx, and Staten Island to share the Commission’s process and gather feedback from local faith communities. The Commission also hosted a series of discussions and individual meetings with key audiences, including families of incarcerated individuals, reentry services providers, civil rights advocates, the business community, faith-based leaders, and correction officers.

Finally, the Commission launched a website, “A More Just New York City” (<http://www.morejustnyc.com>) to solicit public input. Hundreds of visitors to the site shared their opinions about justice reform.

The Commission partnered with the Van Alen Institute to convene three community design workshops in the Bronx, Brooklyn, and Queens. A project team made up of architects, environmental psychologists, designers, and incarceration experts sought to gather a wide range of perspectives on design principles for a modern jail system. Participating community members included former correction officers, individuals who were formerly incarcerated at Rikers, local

business groups, residents, and service providers.

The Commission met, either as a group or individually, with a wide range of individuals and agencies to solicit their feedback and guidance:

Federal Officials

Preet Bharara, U.S. Attorney for the Southern District of New York

Hakeem Jeffries, Congressional District 8

Yvette Clarke, Congressional District 9

Local Officials

Speaker Melissa Mark-Viverito, Council Speaker

Margaret Chin, Council Member

Corey Johnson, Council Member

Andy King, Council Member

Ritchie Torres, Council Member

Rafael Salamanca Jr., Council Member

Costa Constantinides, Council Member

Rory Lancman, Council Member

Karen Koslowitz, Council Member

Stephen Levin, Council Member

Brad Lander, Council Member

Jumaane Williams, Council Member

City Council Democratic Caucus

Eric Adams, Brooklyn Borough President

Rubén Díaz Jr., Bronx Borough President

Matthew Washington, Manhattan Deputy Borough President

Melva Miller, Deputy Chief of Staff, Queens Borough President

New York City Leadership

Joseph Ponte, Commissioner, NYC Department of Correction

Elizabeth Glazer, Director of the Mayor's Office of Criminal Justice

Martha King, Executive Director, NYC Board of Correction

Deputy Commissioner Dermot Shea, New York Police Department

Trish Marsik and Reagan Stevens, Mayor's Task Force on Behavioral Health and the Criminal Justice System

Dr. Feniosky Peña-Mora, Commissioner, NYC Department of Design and Construction

David Burney, Former NYC DDC Commissioner

Angela Licata, Deputy Commissioner of Sustainability, Department of Environmental Protection

Kathryn Garcia, Commissioner, City of New York Department of Sanitation

Euan Robertson, Executive Vice President and Chief Operating Officer, New York City Economic Development Corporation

Daniel Zarrilli, Senior Director, Climate Policy and Programs and Chief Resilience Officer, Office of Recovery and Resiliency

Mark Chambers, Director of the Mayor's Office of Sustainability

Superintendent Timothy F. Lisante, Alternative Schools and Programs, NYC Board of Education

James Patchett, President and CEO, New York City Economic Development Corporation
Commissioner Ana Bermudez, New York City Department of Probation
Jeff Thamkittikasem, Chief of Staff, Department of Correction
Dr. Elizabeth Ford, NYC Health + Hospitals
Patrick Alberts, NYC Health + Hospitals
Dr. Ross MacDonald, Correctional Health Services, NYC Health + Hospitals
Patsy Yang, Correctional Health Services, NYC Health + Hospitals
Kristine Ryan, New York City Office of Management and Budget
Office of the Public Advocate
Department of City Planning, Queens
Department of Environmental Protection
New York City Department of Correction
Workforce Development at the NYC Department of Correction
New York City Board of Education
Health and Hospital Corporation

New York State Leadership

Hon. Lawrence Marks, New York State Chief Administrative Judge
John George, Chief of Administration at the Office of Court Administration
Michael Blake, New York State Assembly Member
Dan Levin, Senior Counsel, State Senator Jeff Klein
Martin F. Horn, Executive Director, New York State Sentencing Commission/Distinguished
Lecturer in Corrections, John Jay College
Rick Cotton, Special Counsel to the Governor, Governor's Office
Richard Kauffman, Chairman of Energy & Finance for New York (Office of Governor Andrew
M. Cuomo) and Chair of the NYSERDA Board
Karim Camara, Executive Director and Deputy Commissioner, Governor's Office of Faith Based
Community Development
Deputy Commissioner Steven Claudio, Deputy Commissioner Steven Claudio, New York State
Department of Corrections and Community Supervision
Port Authority of New York & New Jersey

Justice System Stakeholders

Darcel Clark, Bronx County District Attorney
Cyrus R. Vance, New York County District Attorney
Richard A. Brown, Queens County District Attorney
Michael E. McMahon, Richmond County District Attorney
Eric Gonzalez, Kings County Acting District Attorney
Nicole Keary, Supervising Assistant District Attorney, Bronx County District Attorney
Nitin Savur, Executive Assistant District Attorney for Strategic Initiatives, New York County
District Attorney
Elias Husamudeen, Correction Officers' Benevolent Association
Hon. Alex Calabrese, Red Hook Community Justice Center
Honorable George A. Grasso, Supervising Judge of New York City Arraignments and Bronx
Criminal Court
Tina Luongo, Legal Aid Society

Mary Lynne Werlwas, Legal Aid Society
Justine Olderman, Bronx Defenders
Lisa Schreibersdorf, Brooklyn Defender Services
Stanislaw German, New York County Defender Services
Matt Knecht, Neighborhood Defender Service of Harlem

Service Providers

Joel Copperman, Center for Alternative Sentencing & Employment Services
Anne Patterson, STEPS to End Family Violence
Chris Watler, Center for Employment Opportunities
Ronald Day, Fortune Society
Tanya Krupat, Osborne Association
Elizabeth Gaynes, Osborne Association
Susan Gottesfeld, Osborne Association
Brad Cauthen, Osborne Association
Dr. Jessica Klaver, Center for Alternative Sentencing & Employment Services
Yvette Quinones, Center for Alternative Sentencing & Employment Services
Vivian Nixon, Executive Director, College and Community Fellowship
Christopher Bromson, Crime Victims Treatment Center and Downstate Coalition for Crime Victims
Catherine Shugrue dos Santos, Anti-Violence Project
Laura Fernandez, Sanctuary for Families
David Condliffe, Executive Director of the Center for Community Alternatives
Sebastian Solomon, Legal Action Center
Barry Campbell, Fortune Society
David Rothenberg, Fortune Society
Casimiro Torres, Fortune Society
Downstate Coalition for Crime Victims

Private Sector

Con Edison
Google
Karen Karp & Partners
Agger Fish Corporation
Marjam Supply
Splish Splash
Andrew Kimball, CEO, Industry City
Gifford Miller, Signature Urban Properties
Cushman Wakefield
CBRE Group
Zamperla Group
Jonathan Rose Companies
Farbstein & Associates, Inc.
Global Gateway Alliance
Sidewalk Labs
NYC & Company

Real Estate Board of New York

Civic Organizations

Tom Wright, President, Regional Plan Association
Gina Pollara, President, Municipal Art Society
Lynn B. Kelly, Executive Director, New Yorkers for Parks
Sharon Greenberger, President, YMCA
New York Urban League
Hispanic Federation
John Meyers, Former COO, Trust for Governors Island
Adam Giambrone, Project Director, Brooklyn-Queens Connector
Eddie Bautista, Executive Director, NYC Environmental Justice Alliance
Pratt Center for Community Development
David Ehrenberg, President and CEO, Brooklyn Navy Yard

Education

Dr. Rudolph Crew, President of Medgar Evers College at the City University of New York
Antonio Pérez, President of Borough of Manhattan Community College
Mary Cavanaugh, Ph.D., Dean of the Silberman School of Social Work, Hunter College
Dr. Gail Mellow, President of LaGuardia Community College
Dr. William J. Fritz, President of the College of Staten Island
Preeti Chauhan, Director of the Misdemeanor Justice Project at John Jay College of Criminal Justice

Others

Reverend Al Sharpton, National Action Network
Donna Lieberman, Executive Director, New York Civil Liberties Union
Kristin Miller, Corporation for Supportive Housing
Katal Center for Health, Equity, and Justice
Dalvanie Powell, President, United Probation Officers' Union
Steven Martin and Ann Friedberg, Exiger Associates LLC, Federal Monitor under *Nunez v. City of New York*
Thomas Summers, Correction Officer (ret.)
Wayne Lamont, Correction Officer (ret.)
Kevin Johnson, Correction Officer (ret.)
Ken Ricci, President, RicciGreene Associates
Frank Greene, Principal, RicciGreene Associates
Stephen Carter, Executive Vice President and Global Strategic Development Officer, CGL Companies
Richard Wener, Professor of Environmental Psychology, New York University
Anna Pastoressa
Michelle Jenkins
Working Families Party
Women's Community Justice Project

Beyond New York City

District of Columbia Pretrial Services Agency
National Association of Pretrial Services Agencies
Bexar County Department of Behavioral and Mental Health, TX
Atlanta/Fulton County Police Assisted Diversion Initiative, GA
Hon. Lynn Leibovitz, District of Columbia Superior Court, Washington, D.C.
Hon. Truman A. Morrison III, District of Columbia Superior Court, Washington, D.C.
LEAD (Law Enforcement Assisted Diversion), WA
Chief Elias Diggins, Denver Sheriff's Office
Captain David Bowers, Arlington County Sheriff's Office
Commissioner Kevin Cheverko, Westchester County Jail

Appendix B. Data and Methodology

The Commission engaged in extensive data analysis to inform its recommendations. This appendix provides an overview data sources, measures, and methods.

Data Sources and Measures

Office of Court Administration

The Office of Court Administration provided case-level data for all criminal cases either arraigned in court or disposed in New York City from January 1, 2014 through December 31, 2016. Although three years of data was made available, the Commission generally relied on data from the most recent 2016 calendar year for its analysis.

As a general rule, when analyzing events towards the outset of a criminal case (e.g., arrest, arraignment, and initial pretrial release decision), Commission researchers isolated one full year of cases first *arraigned* in 2016. When analyzing events that required the case to have concluded (e.g., time to disposition, whether case was decided at trial, and sentencing), researchers isolated cases *disposed* in 2016, including cases that may have initially been arraigned in earlier years.

Court data included the following types of measures:

- Key Dates: The data included arrest date, arraignment date, indictment date (where applicable), and disposition and sentence dates.
- Charges: Data included the top charge, respectively at arrest, initial arraignment, Supreme Court arraignment (if indicted), and disposition. Researchers constructed a flag for whether the charges involved a violent felony offense, based on Article 70.02 of the New York State Penal Law.
- Domestic Violence Flag: Although it is known to be imperfect, available data enabled creating a flag for whether each case involved domestic violence.
- Desk Appearance Ticket Flag: The data clarified whether the defendant received a Desk Appearance Ticket and, if so, how many days after arrest was the scheduled arraignment date.
- Demographics: Data included defendant age, sex, race/ethnicity, and borough of arrest.
- Release Status: Data enabled coding the release status at both arraignment and disposition into four basic categories: (1) released on recognizance (ROR), (2) bail set, (3) remanded without bail, and (4) assigned to supervised release. For those who had to make bail, the data also indicated the precise bail amount as well as whether the defendant successfully made bail at arraignment or, if not, whether the defendant made bail subsequently.

- Case Processing: Data enabled creating measures for the number of days from arraignment to disposition as well as between key interim milestones, including time in the lower Criminal Court; time in Supreme Court (if the case was indicted) to disposition; and time from disposition to sentencing. Warrant time and time involved in fitness-to-stand-trial proceedings were subtracted from case processing time utilizing pre-set time measures created by researchers at the Office of Court Administration. Data also included numbers of court appearances, both in Criminal Court and Supreme Court.
- Disposition: Measures were created for case disposition (e.g., pled guilty, dismissed, or adjourned in contemplation of dismissal) and whether the disposition was reached at trial.
- Sentencing: Data enabled classifying the sentence as prison, jail, jail/probation split, straight probation, fine, conditional discharge, and other common categories; as well as computing the length of any prison, jail, or probation sentence.

Merged Court and Jail Data

Researchers from one of the Commission's partner agencies also utilized its access to several additional datasets maintained by the Office of Court Administration, which merge select court and Department of Correction fields. The court system's Division of Technology staff created these merged datasets in conjunction with the citywide case processing initiative that was jointly launched by the Office of Court Administration and the Mayor's Office of Criminal Justice in April 2016. These merged datasets include cases that are in jail and/or pending in the Supreme Court as of set one-day snapshots (with data on new one-day snapshots uploaded weekly to a secure site). The Commission used this data to determine, overall and by charge, the number of indicted cases held in jail on September 29, 2016 while pending in the Supreme Court.²³²

Department of Correction

The Department of Correction and the Mayor's Office of Criminal Justice provided case-level Department of Correction data for nearly ten years of admissions and discharges from city jails. For most purposes, the Commission worked with three datasets:

1. Jail Population: A one-day snapshot dataset for the jail population as of September 29, 2016, the most recent time point made available (N=9,753).
2. Admissions: A cohort of all jail admissions for the period October 1, 2015 to September 30, 2016 (N=62,203); and
3. Discharges: A cohort of all discharges between October 1, 2015 and September 30, 2016 (N=62,219).

The Department of Correction data included the following measures:

- Key Dates and Charges: The data included admission, discharge, and sentence dates as well as the top charge at both admission and (where applicable) sentencing.
- Violent Felony Status: Commission researchers did not rely on any preset flag but conducted an original computation of whether a defendant was in jail on a violent or nonviolent felony, based on Article 70.02 of the New York State Penal Law.

- Status: The data included jail status (e.g., detainee, city sentence, parole violator, etc.). Status data was extremely complex, particularly as there was not a preset status that reliably isolated whether individuals were in jail pretrial or after disposition or sentencing. Commission researchers themselves drew on multiple data fields (status, warrants, charges, etc.) to establish five basic status categories that we believe accurately identify why someone is in jail, summarized as follows:²³³
 - *Pretrial*: Held prior to a conviction (or sentencing), with this category sub-divided based on the top charge (e.g., violation or lesser, misdemeanor, nonviolent felony, and violent felony);
 - *Sentenced to Jail*: Sentenced to a city jail sentence (also sub-divided based on charge severity and type)
 - *Parole Violation*: Sentenced to state prison, released on parole, and held in jail on a parole violation (either prior or subsequent to the formal violation hearing);
 - *Sentenced to State Prison*: Sentenced to state prison and either currently serving time in jail while awaiting transfer to prison or returned from prison to jail temporarily (e.g., to be present for another local court case); and
 - *Other Status*: A miscellaneous number of other statuses including holds pending transfer to another jurisdiction or other miscellaneous holds.
- Defendant Background: The data included borough of origin, defendant sex, age, race/ethnicity, “M” flag status (indicating a possible mental health problem, though this flag is not diagnostic), and risk of re-admission based on a Department of Correction risk assessment tool.
- Length of Stay: The discharge dataset provided total length of stay; for individuals eventually sentenced to jail whose admission began earlier during the pretrial period, Commission researchers carefully distinguished the portion of the stay that was pretrial and post-sentence.

Jail Reduction Projections

Commission researchers sought to devise thoughtful and accurate projections of the impact of Commission recommendations, generally erring in a conservative direction when in doubt. (The actual effect of implementing Commission recommendations is likely to be greater than what is projected.)

The major steps in the analysis were as follows:

Step 1. Identification of Recommendations that Yield Clear Jail Reductions

Many of the Commission’s recommendations, if followed, would translate directly into reductions in the jail population on any given day as well as reductions in the total number of jail admissions each year. For example, the Commission recommends releasing all misdemeanors and nonviolent felonies (except where domestic violence is involved) during the pretrial period, either through supervised release or alternative forms of bail. However, other recommendations have less immediate and direct jail reduction implications but have more to do with

strengthening implementation, building infrastructure, or establishing new programs or mechanisms to treat defendants more fairly. Adopting a conservative approach, we did not model jail reductions based on recommendations of this nature.

Step 2. Focus on Recommendations that Do Not Require State Legislation

Not only is it impossible to predict how state legislators will respond to the Commission's recommendations, but given the intricacies of the legislative process, it is also impossible to model the statistical impact of legislation that has yet to be fully crafted or enacted. Accordingly, we solely modeled the impact of objectives and policies that could be put into practice now, under the current statutory framework. Precisely for this reason, should effective, well-written legislation be passed and signed into law that acts on legislation-based recommendations, jail reductions will be greater than what we have projected.

Step 3. Reasonable Discounts for Imperfect Implementation

It is unrealistic to expect that even under the best of circumstances, the Commission's recommendations will be implemented perfectly. Instead, our projections assume a discount of 25 percent from the projected jail reductions that would result if implementation was perfect. In effect, we assume that for various reasons practitioners on the ground will not implement the recommendations 25 percent of the time. Such implementation discounts are a critical feature of any candid and credible projection methodology, and a specific discount of 20 to 25 percent is standard. (Commission researchers also modeled how both the jail population and annual jail admissions would be affected if implementation was perfect, and, if implementation was so imperfect as to require a 50 percent discount. Those results are available upon request.)

Step 4. Sequential Modeling of Jail Reductions at Four Stages

Events at each stage of the criminal justice process affect who remains in jail at subsequent stages. For example, if individuals have been removed from jail based on reforms at the point of arrest, they will obviously not need to be removed from jail by reforms at the point of pretrial decision-making or sentencing. We scrupulously sought to avoid double-counting of jail reductions by, at each stage of the criminal justice process, assuming that the use of jail had *already* been reduced at earlier stages and only projecting additional reductions based on who is still incarcerated. Specifically, we modeled jail reductions at four stages sequentially, not moving on to the next stage until we had first established the number of individuals who remained in jail after prior stages, overall and within key subgroups defined by charge:

1. Diverting at Point of Arrest: Reducing jail by diverting certain types of cases before they ever reach the court process.
2. Reducing Pretrial Detention: For cases processed in court and not resolved at arraignment, reducing the use of traditional bail and pretrial detention.
3. Reforming Case Processing: For cases still sent to pretrial detention even after implementing reforms at prior stages, reducing case processing time and, thereby, reducing the amount of time the individuals spend in jail.
4. Sentencing Reforms: For cases processed in court, reducing the use of jail at the sentencing stage.

Step 5. Combination of Data Sources to Project Domestic Violence Cases

In the pretrial stages, the Commission made a number of recommendations that treated domestic violence cases differently from others: releasing under pretrial supervision or an alternative form of bail all misdemeanor and nonviolent felony cases that are currently detained—except for those involving domestic violence; and then allowing judicial discretion to admit select, but by no means all, misdemeanor domestic violence defendants into an intensive supervised release program. To quantify these projections, it was therefore necessary to estimate the number of misdemeanor and nonviolent felony defendants (as technically defined by the state penal law) that involve domestic violence; yet, Department of Correction data lacks a domestic violence flag. Fortunately, relying on Office of Court Administration data, which does contain a domestic violence flag, we determined that nearly all domestic violence cases are charged with assault, menacing, stalking, strangulation, criminal contempt, harassment, and burglary in the second degree. Using our court dataset, we then computed, for each of those charges, the percent of cases with the given charge that involve domestic violence. We also computed the likelihood of pretrial detention for domestic violence and non-domestic violence cases with each of the same key charges (there were no significant differences) and determined whether domestic or non-domestic violence cases average a longer case processing time (signaling a possible longer period of pretrial detention). We then applied our calculations based on court data to the jail population and to jail admissions data that we received from the Department of Correction.

The chart that follows provides our most essential findings.

INDEPENDENT COMMISSION ON CRIMINAL JUSTICE AND INCARCERATION REFORM

Jail Population Reduction Projections

Recommendation	Projection
Jail Population at Baseline	9,753
Total Pretrial Jail Population	7,356
<i>1. Diverting at Point of Arrest</i>	
Divert misdemeanor drug possession and petty larceny cases	302
<i>Total Diversion Reductions</i>	<i>302</i>
<i>2. Reducing Pretrial Detention</i>	
<i>Remaining Pretrial Jail Population After Diversion</i>	<i>7,182</i>
Release misdemeanors (non-domestic violence) to supervised release or alternative forms of bail	299
Release nonviolent felonies (non-domestic violence) to supervised release or alternative forms of bail	1,956
Allow judicial discretion to admit misdemeanor domestic violence defendants into supervised release program	49
Allow some 16-24-year-olds on violent felony offense assault, burglary, or robbery into supervised release program (based on risk)	432
Facilitate/expedite bail payment at multiple stages	339
<i>Total Pretrial Reductions</i>	<i>3,074</i>
<i>3. Reforming Case Processing</i>	
<i>Remaining Jail Population with Supreme Court Case Pending</i>	<i>3,176</i>
Improved calendar management, especially with detained cases	245
Adjournments not to exceed 30 days	311
Adjournment for sentencing of 14 days	98
Reduce indictments	29
Make Bronx a focal point	86
Reduce homicide processing time	89
Increase misdemeanor dispositions at arraignment	1
<i>Total Case Processing Reductions</i>	<i>858</i>

Jail Population Reduction Projections (*Continued*)

Recommendation	Projection Under Good Implementation
3. Sentencing Reforms	
<i>Remaining Jail Population Serving City Jail Sentence</i>	<i>1154</i>
Eliminate jail sentences of 30 days or less	216
General expansion of alternatives to incarceration	371
<i>Total Sentencing Reductions</i>	<i>577</i>
<i>Total Jail Reductions</i>	<i>4,810</i>
<i>New Jail Population</i>	<i>4,943</i>

Note: Projections assume good implementation. This involves a discount of 25 percent from the projected jail reductions that would result if the implementation of all recommendations was perfect. In effect, we assume that for various reasons practitioners on the ground will not implement the recommendations 25 percent of the time. This is a standard adjustment.

Note: All projections group violations with misdemeanors.

Note: Based on data provided by the Department of Correction, the Commission developed an estimate of the natural decline in the City's jail population that would result from declining crime and arrest rates. The Commission then consulted a second, preexisting estimate of natural decline in the jail population, published in 2015 (Austin, J., Ware, W., Ocker, R., & Peyton, 2015, *New York City, New York Baseline Jail Population Trends*). Based on both of these methods, the Commission concludes that if the current trajectory holds steady in five years, the jail population is likely to decline by another 100 to 200 individuals, regardless of the reforms described above.

Fiscal Model Methodology

The Commission built a fiscal model based on publicly available data, including city operating and capital budgets and standard construction and staffing cost assumptions. The Commission used the March 2015 “Rikers Island Long-Term Planning” document that was made available through the press.²³⁴ Finally, the Commission researched examples of new jail facilities around the nation to compare construction cost estimates as well as savings estimates. All cost estimates are based on a ten-year design/build and construction process.

The cost analysis varied based on the size and scope of the facilities. The building program assumes construction of four large borough-based jail facilities, one smaller jail facility, and a new training academy. The initial cost estimates were based on City costs for existing projects: the proposed jail facilities in the long-term planning document, the proposed juvenile facilities, and the new NYPD training academy. The Commission then added escalation rates to adjust the cost of construction to 2017 dollars, included assumptions for demolition costs and added contingency costs to account for the complexities associated with developing and the variation in construction needs for developing borough-based facilities.

The Commission also estimated the costs of building new facilities on Rikers Island. In addition to the assumptions outlined above, we assumed an additional cost escalation of 8-15 percent based on information from the NYC Department of Design and Construction. According to DDC, this cost premium accounts for the smaller number of contractors willing to work on Rikers Island, and the difficulty of accessing the island. Together these factors reduce competition and limit the duration of the work day, thus increasing time to completion and cost. Moreover, building on Rikers would require staggering construction of new facilities, which would increase the total building timeline from 10 years to 12 years.

Finally, the Commission assumes the City would pay for development of this new correctional system with a bond issuance(s). Per the advisement of the Office of the NYC Comptroller, we assume that the cost of debt service for these bonds would be 6 percent of the total project’s cost to be repaid over a thirty-year term.

The Commission also evaluated the potential cost savings associated with a new, more humane correctional system. We assumed new facilities designed for direct supervision would require lower staffing ratios. We based the staffing savings estimates on a report from the National Institute of Corrections, which showed the cost of operating direct supervision jails to be 33 percent lower than linear jails. Moreover, the Commission looked to staffing ratios in new direct supervision jail facilities around the nation to estimate the staffing needs in a new system. We assumed maintaining a richly staffed correctional system proportionate to the size of the new, borough-based facilities.

The Commission developed a savings model based on existing Department of Correction budget and staffing patterns, both corrections officer and civilian staff, as well current DOC attrition rates. We then assumed hiring new corrections officers each year to ensure DOC staffing levels remained appropriate to the size of the jail system as the population is reduced and new facilities come on line. Taking into account the ten-year timeline for building new facilities, the debt

service cost for the building program, and the need to hire new corrections officers to stem current attrition rates, The Commission estimated the City could realize net annual savings by year 14.

Appendix C. Community Design Workshop Findings

See attached report.

REDEFINING THE VALUE OF JAILS: PERSPECTIVES FROM NEW YORK CITY COMMUNITIES



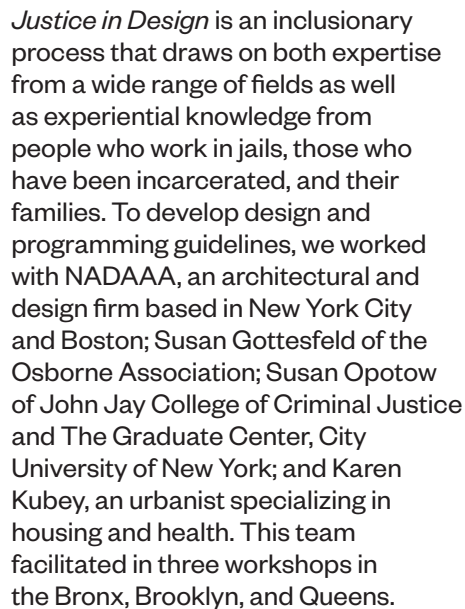
**VAN
ALEN
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**The Independent Commission
on New York City
Criminal Justice
and Incarceration Reform**

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At any given moment in New York City, 10,000 people are in jail, but 75 percent of them have yet to be convicted of a crime. Both those convicted and awaiting trial deserve healthy, safe, and rehabilitative living conditions. Van Alen Institute and the Independent Commission on New York City Criminal Justice and Incarceration Reform partnered to develop *Justice in Design*, an ideas project to create design guidelines for healthier jails.



Understanding how communities perceive and are impacted by jails is essential when determining how to create correctional facilities that are effective, humane, and that represent the values of New Yorkers. The three workshops aimed to ask the public

We were overwhelmed with the thoughtful, moving, and candid contributions from workshop attendees at each session. The collective perspective and input from those who participated will inform the design and programming guidelines report the team is creating. In turn, these guidelines will be used to inform jail facility design principles within the Commission's final report. Van Alen has synthesized the three most compelling takeaways from the workshops; they appear below.



KEY FINDINGS

DESIGN FOR DIGNITY

Workshop attendees perceived jails as places defined by cruelty and inhumanity. What needs to first change in the environment to convey a sense of respect?

When workshop attendees were asked to write words that described the answer to the question, “What is your perception of jails?” groups at every table unequivocally agreed on “unsafe,” “traumatizing,” and “sad.” Part of this negative culture can be linked to facility design. The disparities and inequalities that have become entrenched in the corrections system also manifest themselves in the location and design of jail facilities.



***“After I left,
I couldn’t get
the smell
off me.”***

Workshop attendees who have spent time in jail either as staff or as an inmate associated life inside the jail with poor design, describing it as cold, dark, broken, chaotic, even demonic. Whether their exposure to jail was through detainment, work, or as a visiting family member, everyone mentioned the smell. “It stays with you”, “After I left, I couldn’t get the smell off me.”

Acoustics were a big problem in jail as well. In the Bronx workshop, formerly incarcerated individuals said they had a hard time dealing with the noise in jail. One explained that, “sounds are very important, when you’re out of jail, you still hear the sounds.” Jails today are designed with stark materials and hard surfaces to prevent detainees from

appropriating materials from their surroundings to create weapons. These materials are typically uncomfortable to sit on and cause sound to reverberate throughout the jail. This distrustful approach towards detainees is built into the facility itself, and conveys a sense of danger that isn’t always warranted.

Former correction officers repeatedly talked about how hard it was to try and move detainees from one area of jail to the other. They wanted facilities designed in a way that support more efficient supervision and manageability to relieve much of the strain on their job and improve their approach when dealing with detainees. A large amount of on-the-job stress they felt came from their inability to efficiently supervise a large number of inmates. The officers expressed a desire for a facility that gives them the freedom to effectively do their job without redundant actions because of an inefficient floor layout.

Distressful surroundings and poor design only exacerbate the tension of living and working in such a volatile and demanding place. The negative physical aspects of the facility are impossible to retreat from. For those who are detained or work in jail, many harden themselves to their surroundings as a way of emotional detachment from a difficult and uncomfortable environment. As one detainee stated, “My living situation was unfit for a human, so I began to act inhuman, and was treated that way too.”



“My living situation was unfit for a human, so I began to act inhuman, and was treated that way too.”

In their groups, participants talked about how a well-maintained space designed out of materials that absorb sound and increase privacy could drastically reduce the negative impacts and stresses of jail on inmates and staff.

When asked about design opportunities that could contribute to a safer, more calming experience, they stressed the need for improved lighting, and more natural materials that could help abate anxiety and provide a more restful atmosphere.

Others asked for more color. Worried about her son's lack of exposure to color and limited access to drawing materials in jail, one participant, Anna P. pleaded for soothing paint hues, so that even if he couldn't draw with color, he was surrounded by it.

The positive psychological impact of a more normative environment with nurturing materials and quieter, cleaner, and safer spaces could help promote respect and reinforce healthy, rehabilitative outcomes for detainees.

JAILS AS REHABILITATIVE, NOT JUST PUNITIVE

Workshop attendees had expectations of jails that are not being met. How can jails be of value to those who go through them?

The reality today is a system that warehouses and disproportionately penalizes poor people of color and the mentally ill, often failing to effectively rehabilitate individuals for their release

back into the community. When asked what families, communities, and those who have been formally incarcerated should expect from the criminal justice system, one workshop participant stated, “Jails should be rehabilitative, not just punitive.”

An overwhelming response from the workshops was that both detainees and those reentering the community need support while they are in the system *and* after they leave it. Participants wanted improved services all around, like mental health treatment, educational classes, and job training.



Community-based jails have the opportunity to allow detainees to form a connection between life on the inside and reentry to society. Workshop attendees who had been incarcerated stressed the importance of continued guidance from the system to help ease individuals' transition back into everyday life and to give them a sense of independence.

Poeple at every workshop felt jails could play a role by connecting those released with local organizations that offer access to reintegration programs, housing, job training, and other community resources. They felt reentry services were vital to mitigating the impact of life outside and to reducing recidivism.

Workshop attendees also wanted services like access to video conferencing and lawyers, which could drastically shorten the amount of time one spends in jail awaiting trial.





Formerly incarcerated individuals and corrections officers spoke of the “us versus them” mentality many officers adapted towards detainees—a power situation that perpetuated the stigma towards “criminals,” even when many of those detainees had not yet been convicted. The discrimination and isolation inmates face make it incredibly hard for an individual to prepare for reentry into society when they are dealing with the physical and mental challenges of day-to-day survival in jail.

“Jails should be rehabilitative, not just punitive.”

Improved staff de-escalation training, particularly around mental illness, and enhanced health services for both staff and detainees could help to diminish the stressors that cause tension and lessen the perceived need for disciplinary action and violence. As the newly released return to their

neighborhoods, families, and friends, a network of support and plan for discharge is crucial: It can decrease the likelihood that individuals—especially those with mental health or substance abuse problems—will struggle in the transition and reoffend.

JAILS WITH A DUAL PURPOSE

Most workshop attendees felt jails could serve a dual purpose—both as a detention center and as a community resource. How can jail be an asset to the community?

The workshops provided an opportunity for participants to conceptualize the potential of a jail. Attendees were asked, “How could a jail be an asset to your community?” Given the needs and values they identified for their neighborhoods early on in the workshop, participants suggested ways that a smaller community jail could be more efficient, effective, and foster stronger social and physical connections with the neighborhood.

When asked to think about the design of jails they had experienced and the kind of connections those buildings had with the communities around them, most participants felt that jail building exteriors were often foreboding and inconsistent with the streetscape. One participant mentioned the fact that when they passed by the Brooklyn House of Detention, they had never known what the building was, but felt it was out of place.

The nondescript façade puts the jail out of sight and out of mind, preventing the community from better understanding issues in their own backyard and fueling the stigma that perpetuates the detainees’ isolation and distance from society.



Attendees wanted jails that felt like and looked like their neighborhoods; buildings that resembled other buildings they passed by every day. They wanted to be able to see them as a resource if need be and to feel welcomed as visitors and staff members. Rather than view them as a problem, they wanted to be able to rely on them. Participants proposed jails act as a community space, offering therapy, art classes, and educational programs.

After Mildred T. from the Bronx claimed to her table, “We need a place for the children to go,” more than one person agreed, saying their neighborhood had lost its local community center.



Formerly incarcerated individuals wanted to be able to access mentors and career services after their return to their community. Reform advocates wanted preventative programming, probation offices, and jails located near courthouses.

Weaving these needs in with ground-level retail could increase the exposure the community has with the jail and help to diminish the stigma of those who are detained and work inside. Community involvement increases opportunity for greater public oversight and makes it easier for the true stakeholders to hold the criminal justice system accountable.

Creating community connections through programming and services that offer safer, more transparent

environments for those living, working, and visiting jails restores dignity and fosters collaboration for community-based solutions. A jail that is better integrated into daily life and the community fabric has the opportunity to positively change the culture and context of the neighborhood.

LOOKING AHEAD

This is just the beginning, and these workshops have identified numerous areas for further exploration:

- How can design improve the adverse conditions in jail?
- How can jails effectively address issues of recidivism, mental health, and rehabilitation as detainees move through the justice system?
- What roles could jails play for different communities?

Design alone cannot answer these questions, but it is a useful tool to support positive change. Design can foster a more positive sense of wellbeing that helps break the cycle of degradation and isolation, which breeds negative culture inside jail. We are confident that continued inclusive discussion has the power to bring to light new opportunities to redefine the criminal justice system.





ABOUT THE COLLABORATORS

In our search to better understand the relationship between people and the built environment, Van Alen Institute partnered with the Independent Commission on New York City Criminal Justice and Incarceration Reform to explore the opportunities of future borough-based jails. We want to learn how jails impact the health and wellbeing of both the people inside them and the surrounding community in which they sit.

The commission, formed at the request of New York City Speaker Melissa Mark-Viterito is exploring ways to craft a blueprint for the future of criminal justice in New York City and is completing its final report this March. With this report, they seek to answer, what jails of tomorrow should look like, if it is possible to further reduce the population on Rikers Island, and if so, what should happen to Rikers Island afterwards?



All photos by Cameron Blaylock
Names withheld from pull-quotes out of respect for workshop attendees' anonymity

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- ¹ Jail data comes from the Vera Institute Incarceration Trends Project, except for 2015 and 2016 figures, which come from data obtained from the New York City Department of Correction and the Mayor's Office of Criminal Justice.
- ² Poll commissioned by the Center for Court Innovation, 2017.
- ³ Jails are administered by local (city or county) government and typically house those awaiting trial as well as those with sentences of less than one year. Prisons are administered by states and generally hold those incarcerated for more than one year.
- ⁴ The Commission determined that 44.3 percent of individuals held in jail on September 29, 2016 had an "M" flag, meaning that they received mental health treatment at some point during their confinement. The "M" flag, however, is not diagnostic and tends to capture people with widely varying problem severities. An analysis by the Council of State Governments determined that 43 percent of those with an "M" flag, and by implication 19 percent of those held in jail on September 29, 2016, have a serious mental illness (SMI). See Council of State Governments. (2012). *Improving Outcomes for People with Mental Illnesses Involved with New York City's Criminal Court and Correction Systems*. Available at: https://csgjusticecenter.org/wp-content/uploads/2013/05/CTBNYC-Court-Jail_7-cc.pdf.
- ⁵ Henrichson, C., Rinaldi, J., and Delaney, D. (2015). *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*. Vera Institute of Justice. Available at: https://storage.googleapis.com/vera-web-assets/downloads/Publications/the-price-of-jails-measuring-the-taxpayer-cost-of-local-incarceration/legacy_downloads/price-of-jails.pdf.
- ⁶ Ibid.
- ⁷ Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). *The Hidden Costs of Pretrial Detention*. New York: Laura and John Arnold Foundation. Available at: <http://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf>.
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- ¹⁰ Swavola, E., Riley, K., and Subramanian, R. (2016), *Overlooked: Women and Jails in an Era of Reform*, The Vera Institute of Justice. Vera Institute of Justice. See page 9. Available at: https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-report-updated.pdf.
- ¹¹ Venkatesh, S. A. (2006). *Off the Books: The Underground Economy of the Urban Poor*. Cambridge, MA: Harvard University Press.
- ¹² See, for example, Herman, S. (2010). *Parallel Justice for Victims of Crime*. Available at: <http://paralleljustice.org/thebook/>.
- ¹³ Alliance for Safety and Justice. (2016). *Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice*, Alliance for Safety and Justice, 2016, p. 13. <https://www.allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.
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- ³⁴ Judges remanded 0.8 percent of defendants directly to jail (without chance of bail) and sent 1.5 percent to supervised release, a new program that provides supervision in the community as an alternative to bail.
- ³⁵ Rempel, M., et al. (2017), Op Cit.; Human Rights Watch. (2010). *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*. New York, NY: Human Rights Watch.
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⁷³ Kutateladze et al. (2014), Op Cit.

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⁷⁹ New York State Unified Court System. *Standard and Goal Guidelines*. Retrieved from <http://nylawyer.nylj.com/adgifs/decisions/041012standards.pdf>,

⁸⁰ DiFiore, J. (2016, February 8). *Investiture Remarks*. Retrieved from <https://www.nycourts.gov/whatsnew/pdf/investiture-remarks.pdf>.

⁸¹ DiFiore, J. (2017, February 22). *The State of Our Judiciary 2017*. Address presented in the Bronx County Hall of Justice, February 22, 2017, Bronx, NY.

⁸² If case processing reforms are *added* to the prior pretrial recommendations, which would remove a large number of defendants from pretrial detention in the first place, improved case processing would still reduce the daily jail population by approximately 850 more individuals.

⁸³ Rempel, M., Fisler, C., Kerodal, A., Spadafore, J., Lambson, S. H., & Berg, R. (2017). *Felony Case Processing in New York City: Findings and Recommendations*. New York, NY: Center for Court Innovation, see pages 22-23. Available at: <http://www.courtinnovation.org/felony-case-processing-NYC>.

⁸⁴ Unindicted felonies either had their charges reduced or dismissed in the lower Criminal Court or reached a pre-indictment felony plea agreement, known as a Superior Court Information or SCI.

⁸⁵ Steelman, D. C. & Griller, G. M. (2013). *Rethinking Felony Caseflow Management to Create a Culture of High Performance*. Williamsburg, VA: National Center for State Courts. Available at: <http://nacmconference.org/wp-content/uploads/2014/05/BJA-Rethinking-Felony-CFM-Draft-Nov-2013.pdf>.

⁸⁶ Ibid., see page 70.

⁸⁷ Hard data analysis to quantify the effect of discovery- or defense-related delays was not possible.

⁸⁸ Ibid., see pages 48-51.

⁸⁹ DiFiore, J. (2017). Op. Cit.

⁹⁰ See Criminal Procedure Law of New York § 30.30 (1) (a-d).

⁹¹ DiFiore, J. (2017). Op. Cit.

⁹² Van Duizend, R., et al. (2011), Op Cit. There are two important differences between the *Model Time Standards* proposed by the National Center for State Courts and the Commission's recommendations. The first difference is that, consistent with the state court system's longstanding 180-day standard, we allow the 180-day time clock to begin ticking after indictment and to apply only to Supreme Court processing, thus exempting up to several months of pre-indictment case processing time in the lower Criminal Court. The second difference is that the Commission is not including unindicted cases in the standard, whereas the National Center for State Courts includes all felonies, regardless of whether or not they are indicted. These divergences respectively make our proposed standard easier and more difficult to meet than the *Model Time Standards*, deviations that we believe largely cancel each other out but that are logical, given the multijurisdictional nature of felony case processing in New York State. A final deviation is, of course, that we allow for a longer standard for homicide and sex offense cases, whereas the *Model Time Standards* does not allow for any variations based on the charge.

⁹³ Steelman, D. C. & Griller, G. M. (2013), Op Cit, see page 39 for the list of states whose practices were examined.

⁹⁴ Rempel, M., Fisler, C. et al. (2017), Op Cit.

⁹⁵ Steelman, D. C. & Griller, G. M. (2013), Op Cit.

⁹⁶ Technically, the memorandum issued by Hon. Matthew D'Emic proposed the slightly more ambitious standard of four weeks (exactly 28 days).

⁹⁷ Mayor's Office of Criminal Justice. (2017). *February 9, 2017 Case Processing Weekly Briefing*.

⁹⁸ Ibid. Demonstrating that change is possible, the Brooklyn Supreme Court saw a 307 percent improvement in meeting the first of these milestones when comparing February 2016 to February 2017.

⁹⁹ See S.5988, <https://www.nysenate.gov/legislation/bills/2015/s5988/amendment/original>.

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- ¹¹² HR&A Advisors, Inc. (February 6, 2017) Rikers Island Reuse Planning, NYC Department of Correction Existing Facilities.
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- ¹¹⁵ Van Alen Workshops – Justice by Design p. 7.
- ¹¹⁶ September 14th Commission Meeting.
- ¹¹⁷ Hamilton, B., (2013) Op. Cit./
- ¹¹⁸ Blau, R. (2016). *Three Rikers Island Detainees Trash Their Cells, Causing \$10.5G in Damage*. *New York Daily News*. Retrieved from <http://www.nydailynews.com/new-york/nyc-crime/rikers-island-detainees-trash-cells-article-1.2819254>.
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- ¹²¹ Cranston, M. (2015). *Rikers' Big Problem: It's Falling Apart. Detainees Can Literally Make Weapons Out of the Deteriorating Physical Plant*. *New York Daily News*. Retrieved from: <http://www.nydailynews.com/opinion/mark-cranston-rikers-big-problem-falling-article-1.2148770>.

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- ¹⁹⁹ On the DOC recruitment website the values statement reads: “To be BOLD is to lead honorably and selflessly serve your community. As bold and faithful members of the New York City Department of Correction we pledge to: Act with integrity; Respect our fellow citizens; Serve with compassion; Inspire correctional change nationwide; Transform the lives of those in our care.” See City of New York Department of Correction, DOC Overview: Mission - Values. Available at <http://www1.nyc.gov/site/jointheboldest/overview/mission.page>
- ²⁰⁰ This estimate is a per-bed cost estimate that is based on recent city estimates and informed by the construction costs of modern, direct supervision jails across the United States. This midpoint estimate includes construction hard costs, soft costs, and the demolition costs of the three existing Borough based correctional facilities with an escalation rate of 3% occurring throughout the duration of the project. This estimate includes all of the demolition, procurement, and assumes that land use review, procurement, and construction will all be fully completed within 10 years. This estimate assumes no cost for land acquisition as they city would utilize city owned land. Finally, total project costs and annual debt service costs account for inflation.
- ²⁰¹ Nicholas, J.B. (2016). *De Blasio Resumes Bloomberg’s Plan for Yet Another Jail on Rikers Island*. *Village Voice*. Retrieved from <http://www.villagevoice.com/news/de-blasio-resumes-bloomberg-s-plan-for-yet-another-jail-on-rikers-island-9215837>.
- ²⁰² Jay Farbstein & Associates, & Wener, R. (1989). *A Comparison of “Direct” and “Indirect” Supervision Correctional Facilities*. National Institute of Corrections. Available at <http://static.nicic.gov/Library/007807.pdf>. Although significant, the results are descriptive in nature and not from a nationally representative sample.

²⁰³ Many modern, direct supervision facilities have significantly lower staffing ratios. For instance, the downtown Arlington County Jail has approximately 0.33 uniformed officer for every 1 detainee, Denver's Correctional System has approximately 0.37 uniformed officer for every 1 detainee and San Diego's Las Colinas Correctional Facility has an approximate uniformed staffing ratio of 0.33 uniformed officer for every 1 detainee.

²⁰⁴ Despite the daily detainee population decreasing by half, the Commission's estimated cost-savings conservatively do not decrease funding for "Other than Personal Services" spending at DOC, leaving funding constant at \$160 million a year. Furthermore, this savings estimate conservatively does not include any corresponding decreases in overtime, further budgeting in a contingency into the Commission's savings estimates. This coupled with the fact that the projected system's conservative staffing ratio of 1.14 employees for every 1 detainee, leaves the Commission confident that annual savings in the realm of \$1.6 billion are both realistic and attainable.

²⁰⁵ City of New York FY 2018 Preliminary Budget.

²⁰⁶ The Commission assumes that the Department of Corrections would continue to attrite 900 officers, but would hire 300 replacements hires a year.

²⁰⁷ HR&A estimated that demolition would cost approximately \$145 per square foot.

²⁰⁸ This estimate is a per-bed cost estimate that is based on recent city estimates and informed by the construction costs of modern, direct supervision jails across the United States. This midpoint estimate includes construction hard costs, soft costs, and the demolition costs of the 14 existing Rikers Island facilities with an escalation rate of 3% occurring throughout the duration of the project. This estimate includes all of the demolition, procurement, and assumes that land use review, procurement, and construction will all be fully completed within 12 years. Additionally, this estimate assumes no cost for land acquisition as they city would utilize city owned land.

²⁰⁹ September 14th Commission Meeting

²¹⁰ City of New York FY 2016 Annual Operating budget, which excludes the associated fringe benefits and pension contribution costs of employees involved in transportation.

²¹¹ In our Backyard: Overcoming Community Resistance to Reentry Housing (A NIMBY Toolkit). (2016). *John Jay College of Criminal Justice and the Fortune Society*, 16.

²¹² December 13th Commission Meeting

²¹³ *Bjarke ingels group reveals plans for stacked concrete police station in the Bronx*. (2016). Designboom. Retrieved from <http://www.designboom.com/architecture/bjarke-ingels-group-big-nypd-40th-precinct-bronx-new-york-02-01-2016/>.

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²¹⁶ In our Backyard: Overcoming Community Resistance to Reentry Housing (A NIMBY Toolkit), *op. cit.*, 7.

²¹⁷ *Ibid.* at 9.

²¹⁸ *Ibid.*

²¹⁹ *Ibid* at 10.

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²²² De Novi, W. (2016). "Renaming Rikers." *Pacific Standard*. Available at: <https://psmag.com/re-naming-rikers-4408d77924de#.q67fg8aoa>.

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²²⁶ New York City Department of Housing Preservation and Development. (2014). New York City Housing and Vacancy Survey.

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²²⁹ All costs and financial benefits in this chapter are expressed in today's dollars, as if project components were undertaken today. This approach is distinct from the approach used in the preceding chapter, due to the uncertainty

on overall project timeline for new uses. For capital budgeting purposes, actual project costs would need to be adjusted upward to account for construction cost inflation.

²³⁰ Net public cost refers to the amount of money that has not already been allocated for funding from the state, federal, and local governments and excludes private contributions.

²³¹ The Commission did not examine potential sites for a memorial or a museum, which could, in fact, be located off-Island.

²³² The Office of Court Administration graciously confirmed permission for one of the Commission's partner agencies, the Center for Court Innovation, to use its preexisting access to this data for the purpose of assisting the Commission.

²³³ The Commission departed from several prior analyses in its coding of defendant status, based on Department of Correction data. Most importantly, the Commission did not rely on the City's status category of "detainee" to signify that someone is held pretrial. Instead, only those individuals who were admitted on a new case where the top charge was a violation, misdemeanor, or felony were classified as a "pretrial detainee" in our analysis. Individuals with no new criminal case but who were in jail on a warrant or hold, and who in many cases could be clearly discerned based on other available data to have already been sentenced in the past, were *not* defined as pretrial. Instead, these individuals were added into one of three other status categories that Commission researchers created: sentenced to state prison (including individuals designated as "newly state sentenced" or "state court return" in the original dataset); held for other jurisdiction (including individuals held on fugitive warrants and federal and immigration holds, among others), and other holds (including individuals held on open criminal court, supreme court, probation, family court, and other warrants or holds). A small fraction of individuals had no verifiable status in the data and were classified as "unknown." Prior to the Commission's analysis, many publicly available estimates of the New York City's jail population include an "other detainees" category and define the defendants in this category as part of the pretrial population, leading to an inflated pretrial estimate. Specifically, Commission researchers learned that more than 3 percent of the jail population on September 29, 2016 would have been classified as "other detainee" in past estimates and added to the total pretrial population. This discrepancy accounts for the Commission's finding that exactly three-quarters (75 percent) of the jail population is held pretrial, whereas others have placed the pretrial population in the range of 78 percent to 80 percent.

²³⁴See "Rikers Island Long-Term Planning" via https://www.scribd.com/document/318220914/March-Presentation-on-Rikers-Closure#from_embed

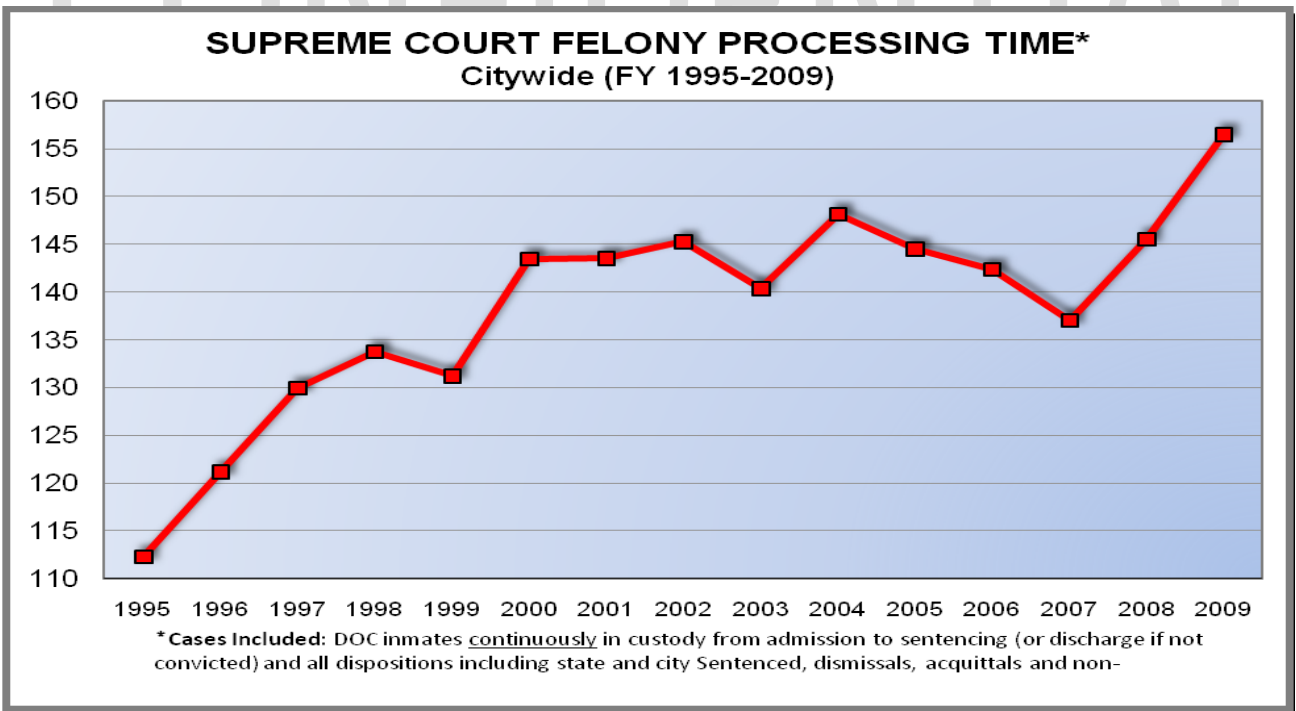
Supreme Court Processing of DOC Detainees

SUPREME COURT PROCESSING OF DOC DETAINEES

ANALYSIS

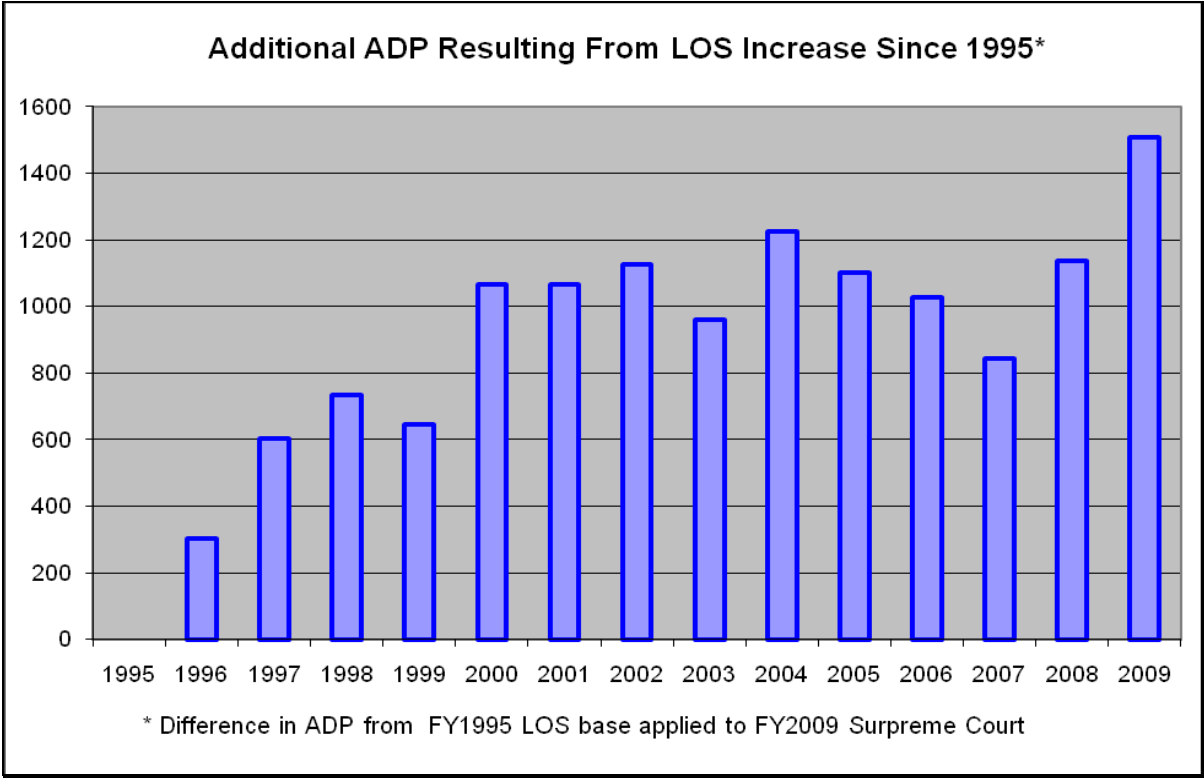
While the volume of reported crime and police activity have their obvious impact on jail population on the front end, the sum total of prosecutorial, defense and court judgments will have an equal effect on our population levels by determining when inmates leave (i.e. their length of stay). Of all of the groups of inmates in our custody, detainees with cases being adjudicated in Supreme Court have the longest lengths of stay. The average length of stay of this group has grown dramatically over the last 15 years. Because of their long lengths of stay, Supreme Court cases have a disproportionate impact on our inmate population and, consequently, our operating budget. While only 8 percent of our annual discharges will be sent state prison from a Supreme Court conviction, this same population represents 34 percent of the inmate population on any given day.

At various times over the last twenty years, the Department has tried to alert criminal justice and budget officials in the City of the pivotal impact of delays in court processing of felony cases on our population levels. Unfortunately, the Supreme Court length of stay continues to rise. The chart below shows Supreme Court adjudication times to sentencing or dismissal. Since 1995, the average adjudication time has increased by 44 days, with an alarming growth spurt of about 20 days over the past two years.



This trend is forcing us to operate and staff housing areas that otherwise would not be required on the basis of arrest rates alone. If state supreme courts in NYC processed their cases in FY 2009 at the rate that they did in

2007, our average daily population would be 665 lower now. If they processed at the 1995 rate, our current population would be 1,511 lower. A reduction of 665 inmates per day could save DOC at least \$14 million per year, and a reduction of 1,500 inmates could save us \$89 million annually.



Why have cases been allowed to linger so long? The most likely reason is that Correction is the only stakeholder in expediting the process. The role of NYPD ends at arraignment. Prosecutors want high conviction rates and are understandably comfortable having defendants spend longer times awaiting disposition as leverage in plea bargaining. Judges always want more time to consider cases. Most defendants would rather spend time in jail on Rikers Island than spend time in State prison. Since they get credit for time served on Rikers, they are happy to let the case drag out and put off going to prison. So defense lawyers routinely waive their clients' speedy trial rights.

Over the years, DOC has observed that reductions in Supreme Court intake correlate almost precisely with the increased time to prosecute each of these cases. Also, we have found that the number of State Supreme Court judges has not decreased commensurately with the reduction in felony cases. In other words, caseloads are going down, and judges are taking more time per case as more time is available.

In the last two years, DOC has used the budget process to call attention to the contribution of Supreme Court processing delays to our daily population. As a result, our fiscal year 2010 budget includes a number of population reduction initiatives and assumes a reduction of 580 inmates per day through:

- Supervised Release for Low Risk Defendants (250 inmate reduction)
- Reduction in Conviction to Sentencing Time (130 inmate reduction)
- Expedited Hearings for Certain Criminal Cases (100 inmate reduction)
- Bail Expediting Program (100 inmate reduction)

Of these initiatives, only the proposed reduction in conviction-to-sentencing time and the expedited hearings for criminal cases really address felony court processing. Nevertheless, if the city could successfully implement these initiatives, it would be an important and meaningful step in the right direction. Furthermore, given our resource needs for preserving safety and security and maintaining our facilities and infrastructure, reducing our population may be the only way that we will be able to meet our budgetary targets in the future.

RECOMMENDATIONS

1. Seek out every opportunity to educate criminal justice actors, City Hall, the Office of Management and Budget, and (as appropriate) the public on the effect of court processing delays on the jail population and the fiscal consequences of such delays on New York City.
2. Remain vigilant with the Criminal Justice Coordinator, criminal justice actors (such as the district attorneys and courts) and the Office of Management and Budget to ensure that they are doing everything necessary to achieve the population reduction initiatives to which they have agreed.

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