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# Navigating the Bail Payment System in New York City

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## Findings and Recommendations

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and Michael Rempel



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Navigating the Bail Payment System in New York City:  
Findings and Recommendations

*Submitted to:* The Mayor's Office of Criminal Justice (MOCJ)

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We are grateful for the time and candid information provided through the interviews that were conducted with representatives from the following stakeholder agencies:

- New York City Criminal Justice Agency
- New York State Unified Court System
- New York City Department of Correction
- Legal Aid Society
- Neighborhood Defender Services of Harlem
- Bronx Defenders
- New York City Councilmember Rory Lancman’s Office
- Bronx Freedom Fund
- Brooklyn Community Bail Fund

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## Chapter 1

# Introduction

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The use of money bail places a significant burden on indigent defendants and their families.<sup>1</sup> When defendants cannot afford bail, research indicates that pretrial detention leads to a range of potentially deleterious outcomes, including an increased likelihood of a criminal conviction (and resulting collateral consequences); jail or prison sentences; and recidivism following release.<sup>2</sup> Even for those who can afford bail, the often confusing and perplexing process of how to pay it adds another level of inconvenience for family members and friends—not to mention the prospect of delays and an increase in the time that defendants spend in pretrial detention.

In New York City, bail can be paid at the courthouse following arraignment; at any subsequent court appearance, during visits with attorneys at court; at the Rikers Island jail complex; or at detention centers in the Bronx, Brooklyn, and Manhattan.<sup>3</sup> Each of these

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<sup>1</sup> See, for example, Phillips, M. T. August 2012. *A Decade of Bail Research in New York City*. New York, NY: New York City Criminal Justice Agency; and Pretrial Justice Institute. March 2012. *Rational and Transparent Bail Decision Making: Moving From a Cash-Based to a Risk-Based Process*. Washington, D.C.: Pretrial Justice Institute. For important national overviews, see Eaglin, J., and Solomon, D. 2015. *Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice*. New York, NY: Brennan Center for Justice at New York University School of Law; Lowenkamp, C. T., VanNostrand, M., and Holsinger, A. November 2013. *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*. Houston, TX: Lilian and James Arnold Foundation. Available at: [www.arnoldfoundation.org](http://www.arnoldfoundation.org); Pretrial Justice Institute. March 2012. *Rational and Transparent Bail Decision Making: Moving From a Cash-Based to a Risk-Based Process*. Washington, D.C.: Pretrial Justice Institute. Available at [www.pretrial.org](http://www.pretrial.org); and Schnacke, T. R. August 2014. *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*. Washington, D.C.: National Institute of Corrections.

<sup>2</sup> See, for example, Lowenkamp, C. T., VanNostrand, M., and Holsinger, A. November 2013. *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*. Houston, TX: Lilian and James Arnold Foundation.

<sup>3</sup> These facilities include the Vernon C. Bain Center (Bronx), the Brooklyn Detention Complex, and the Manhattan Detention Complex.

facilities has its own policies and procedures that are often challenging to navigate, especially during a chaotic and difficult time for defendants' families and friends.

In 2014, of the 48,816 disposed criminal cases in New York City in which bail of more than \$1.00 was set at arraignment,<sup>4</sup> in only 13.9% (6,798) were family or friends able to successfully navigate the bail payment system at the courts immediately following arraignment. In an additional 12.5% of cases (6,082), family or friends were able to pay bail sometime between the defendant's post-arraignment detention and their second court appearance. In other words, of the 12,880 cases involving family or friends who were capable of posting bail early in case processing (by the second court appearance), close to half (47.3%) of those defendants' family and friends were unable to post bail immediately after arraignment, prior to the defendants' removal from the courthouse. Ultimately, prior to eventual case disposition, bail was posted in 33,847 cases disposed in 2014, demonstrating that a large volume of individuals experiences the bail payment system each year.

With funding from the Mayor's Office of Criminal Justice (MOCJ), researchers at the Center for Court Innovation examined the current bail payment process both within the courts and at Department of Correction facilities, which include the Rikers Island jail complex and other borough-based detention centers. This report provides the findings, including a set of bail payment system maps and a set of recommendations that might lead to better outcomes.

Research questions focused on understanding the current system, including inefficiencies and potential confusion experienced by defendants, family members and friends, defense attorneys, and staff responsible for overseeing bail payment at courthouses in each borough and at Department of Correction facilities. Research questions included the following:

- How does the bail payment process work at the courts following arraignment and at detention facilities run by the New York City Department of Correction (DOC)?
- Are there components of the process that are particularly confusing or inefficient?
- What is the process for disseminating information to assist defendants as well as family members or friends seeking to pay bail on defendants' behalf?
- Ultimately, are there specific gaps or bottlenecks that are likely to create delays in paying bail and that might be effectively targeted for reform?

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<sup>4</sup> Figures omit those cases in which \$1.00 bail was set, since such bail amounts generally signify that the defendant was already detained on another case, as explained later in this report.

## Chapter 2

# Methodology

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To complete a rigorous analysis of the bail payment system in New York City and to address the research questions, researchers from the Center for Court Innovation implemented the multi-method research design outlined below from August to November 2015.

### Stakeholder and Practitioner Interviews

Interviews were conducted with those stakeholders involved with the bail payment system to obtain a clear understanding of the process at the five courthouses where defendants are arraigned (one per borough) and at DOC facilities. Individual interviews were conducted with various representatives from the following stakeholder agencies:

- New York City Criminal Justice Agency (CJA)<sup>5</sup>
- New York State Unified Court System (UCS)
- Legal Aid Society
- Neighborhood Defender Services of Harlem
- Bronx Defenders
- New York City Councilmember Rory Lancman's Office
- Bronx Freedom Fund<sup>6</sup>
- Brooklyn Community Bail Fund<sup>6</sup>

These semi-structured interviews lasted between 30 and 90 minutes and explored the mechanics of bail payment, each organization's role in the process, and strengths and challenges of the current system. Interviews were recorded when possible, or else notes were taken in long hand. See Appendix A for the interview instrument.

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<sup>5</sup> The New York City Criminal Justice Agency (CJA) is the city's pretrial services provider.

<sup>6</sup> The Bronx Freedom Fund and Brooklyn Community Bail Funds are charitable organizations helping low-income Bronx Defenders clients and Brooklyn residents, respectively, with misdemeanor charges meet their bail obligations.

## **Focus Groups with Defense Attorneys**

Researchers conducted two one-hour focus groups with 10 attorneys each, one with Legal Aid staff attorneys and supervisors from the arraignment parts in all five boroughs and another with attorneys from the Bronx Defenders and staff from the Bronx Freedom Fund. These semi-structured group conversations covered the mechanics of bail payment at the courts; communication about bail among attorneys, defendants and families/friends; and experiences with bail expeditors and intake facilities. See Appendix B for the focus group instrument.

## **Site Visits to Department of Correction Facilities**

Half-day visits were conducted at Department of Correction (DOC) facilities, specifically at Rikers Island and the Vernon C. Bain Center, a detention center in the Bronx. Senior policy officials, civilian staff, and correctional officers participated in the visits, which involved tours of the facilities and detailed walk-throughs of the bail payment process.

## **Court Observation**

Site visits were conducted at four of the five courthouses in New York City where criminal arraignments are held (excluding Staten Island). During these visits unstructured courtroom observations were conducted. Topics of interest included the nature of judicial interactions with defendants and defense attorneys regarding bail; bail information-sharing in court and in the outside areas (hallways, information kiosks, etc.); and information-sharing specifically with family members and friends seeking to pay bail. Observations also involved the bail windows at the courthouses.

## **Case Analysis**

We examined the difference in release status between arraignment and second court appearance in an effort to further understand the number of defendants who potentially could have made bail initially if the system were easier to understand or streamlined.

Figure 1

New York City Bail Payment System Map: Courthouse (UCS)

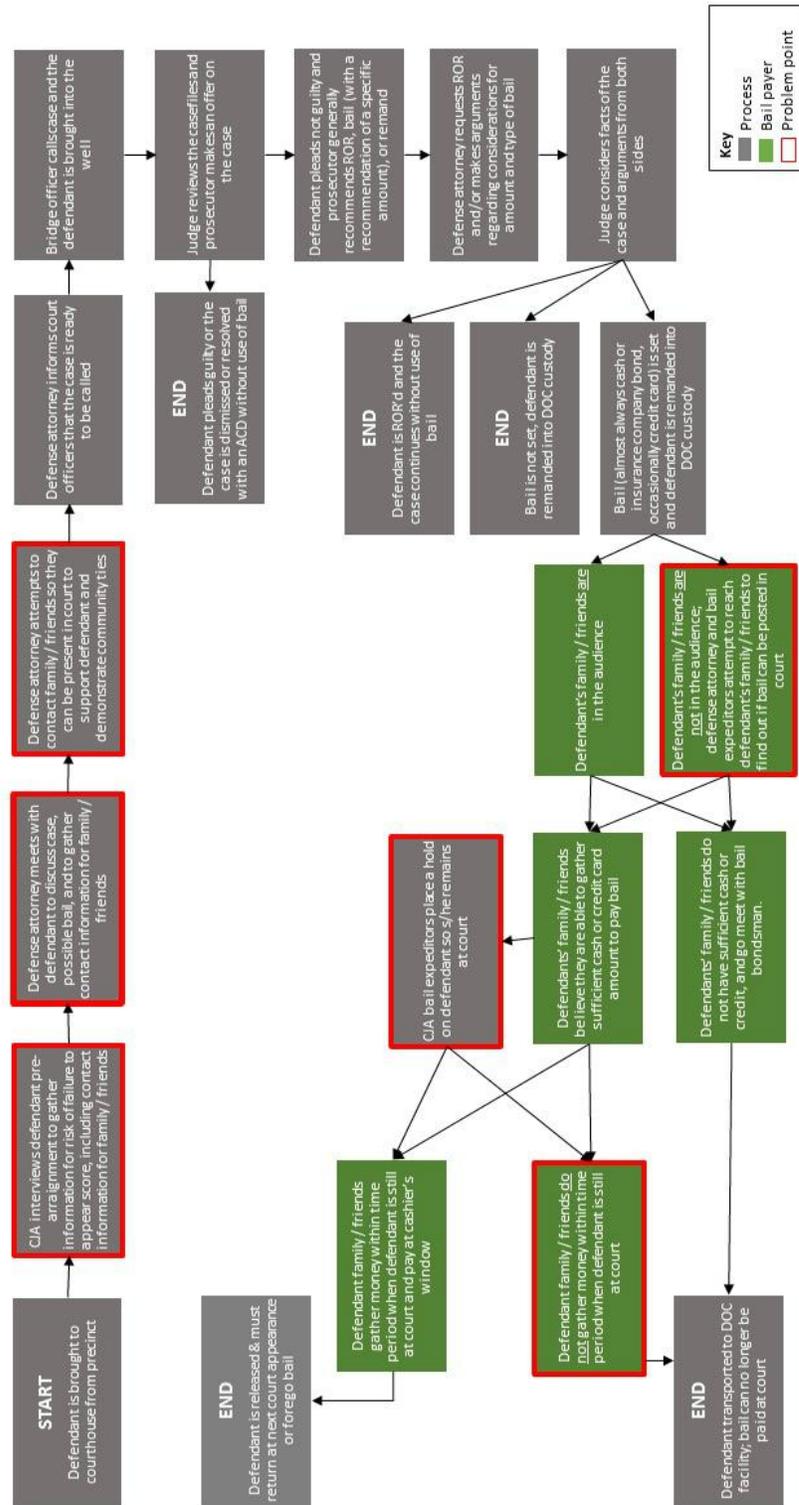
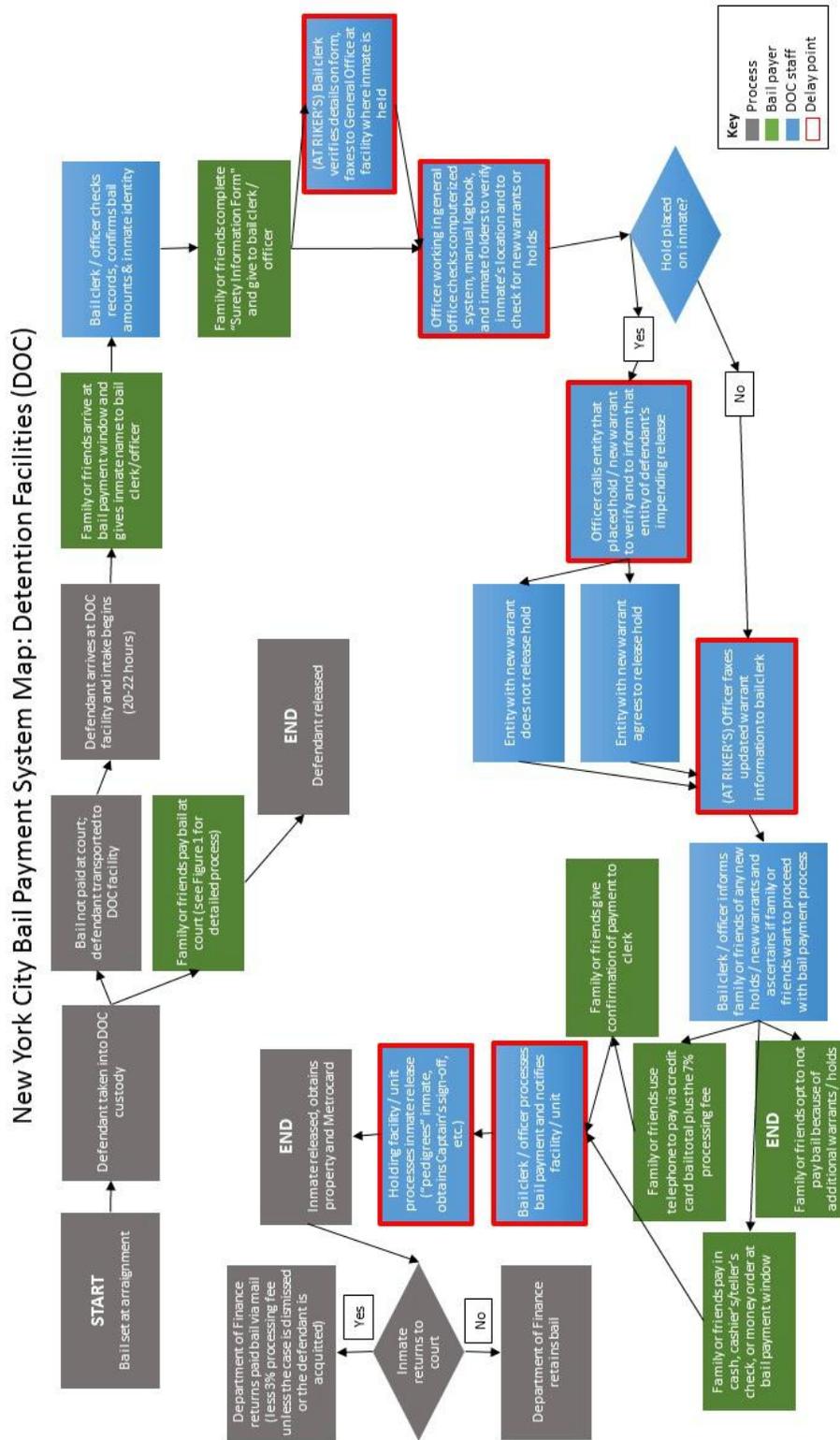


Figure 2



## Chapter 3

# Findings and Recommendations

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What follows are 17 overarching findings and concrete recommendations to inform future policy discussions and initiatives.

**Finding #1. Defendants are not consistently allowed to write down phone numbers of family members or friends prior to phone confiscation by the New York City Police Department.** At the time of arrest, when defendants are processed at the precinct, they are not uniformly given the opportunity to write down phone numbers of potential bail payers prior to their phones being confiscated and vouchered. Consequently, many defendants, particularly young ones, do not know how to contact those who may potentially be able to gather bail on their behalf. This is information the New York City Criminal Justice Agency (CJA) and defense attorneys could both use for multiple purposes related to the setting and payment of bail. CJA conducts pre-arraignment interviews with most criminal defendants to determine defendants' risk of failure to appear. Verifiable community ties are a factor in this analysis. In addition, both CJA bail expeditors and defense attorneys could utilize phone numbers in pre- or post-arraignment efforts to reach out to family and friends of the defendant who might be willing and able to pay bail on the defendant's behalf.

- **Recommendation #1.** *Implement a consistent practice of allowing defendants to write down several phone numbers from their phones prior to the phones being confiscated and vouchered by NYPD so that defendants are able to provide these numbers to CJA during the pre-arraignment interview and then, if necessary, to both CJA bail expeditors and defense attorneys post-arraignment. CJA is currently in the early stages of working with NYPD to fashion such a procedure, and this effort should be supported.*

**Finding #2. Few bail payment options are regularly offered.** There are nine types of bail payment authorized by the New York Criminal Procedure Law:

- **Cash Bail:** The entire bail amount is paid in cash, money order, certified check, or teller's check.

- **Insurance Company Bail Bond:** The defendant’s family or friends enter into a legal agreement with an insurance company wherein the defendant’s family or friends pay a percentage (no more than 10%) of the overall total bond amount set, which the family or friends forfeit as the insurance company fee. In addition, family or friends make an additional (unregulated) deposit of cash or property. Overwhelmingly, this collateral is required in cash; moreover, the lower the bail amount, the higher the percentage of the total that the bail bond company typically requires as collateral.<sup>7</sup> If the defendant fails to appear at future court dates, the insurance company assumes responsibility to pay the total bond amount, and the family or friends forfeit the collateral.
- **Secured Surety Bond:** The defendant’s family or friends secure the total bond amount with personal property equal to or greater than the amount of the bond or real property valued at twice the bond amount, which they forfeit if the defendant fails to appear at future court dates.
- **Secured Appearance Bond:** The defendant secures the total bond amount with personal property equal to or greater than the amount of the bond or real property valued at twice the bond amount, which he/she forfeits if he/she fails to appear at future court dates.
- **Partially Secured Surety Bond:** A percentage of the total bond (up to 10%) is paid to the court by a family member or friend, who enters into a legal agreement to be responsible for the total bond amount if the defendant fails to appear at future court dates.
- **Partially Secured Appearance Bond:** A percentage of the total bond (up to 10%) is paid to the court by the defendant, who enters into a legal agreement to be responsible for the total bond amount if he/she fails to appear at future court dates.
- **Unsecured Surety Bond:** A family member or friend enters into a legal agreement to be responsible for the entire bond amount if the defendant fails to appear at future court dates.
- **Unsecured Appearance Bond:** The defendant enters into a legal agreement to be responsible for the entire bond amount if he/she fails to appear at future court dates.
- **Credit card:** The entire bail amount is paid by credit card.

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<sup>7</sup> Phillips, M. T. April 2011. *Commercial Bail Bonds in New York City: Characteristics and Implications*. New York, NY: New York City Criminal Justice Agency. Available at: <http://www.nycja.org>. Note that this practice places a higher burden on low-income individuals, who are those typically using bail bondsmen to assist in the payment of lower bail amounts.

In the vast majority of cases, bail is set as cash bail or insurance company bail bond. Seldom are the other seven options used, some of which are less financially onerous. Given the time involved in locating and gathering funds sufficient for insurance company bail bond, this form of bail payment virtually guarantees that the defendant will be sent to Rikers Island for at least a day, possibly more. Cash bail is difficult to gather in the short window afforded post-appearance, particularly at night and at courthouses with no on-site ATMs, which include the courthouses in the Bronx, Brooklyn, and Queens.

- **Recommendation #2a.** *Expand use of alternative forms of bail to accommodate defendants' financial means. In this regard, increasing the use of credit card and partially or unsecured bonds would be especially useful, allowing increased options for defendants with lower bail amounts. (Research indicates that lower bail amounts are less lucrative for insurance bondsmen and require a much higher percentage of cash-down at the outset.)*<sup>8</sup>
- **Recommendation #2b.** *Establish easily-accessible ATMs at the courthouses in all five boroughs of New York City to increase rapid access to cash from multiple sources.*
- **Recommendation #2c.** *Allow defendants to pay their own bail at the courthouse. Installing hand-held credit card machines in all the courtrooms so that in-custody defendants with debit/credit cards could pay in the courtroom would greatly assist in this effort. Currently, defendants must remain in detention even if they have the means to pay the bail amount with their ATM cards or cash.*

**Finding #3. Information about bail amount, type, and payment options is provided to defendants and bail payers inconsistently and incompletely.** Given the volume and pace of courtroom proceedings, there is often a breakdown in the information conveyed to defendants and to any family and friends in the audience regarding the bail amount, type, and payment options. It is not unusual for defendants and families/friends to hear many different bail amount numbers (i.e., the people's recommendation, the defense attorney's petition, the judge's final decision) and different types of bail payment options (which may or may not be clearly specified on the record). Different indigent defense

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<sup>8</sup> Phillips, 2011.

organizations have different methods of conveying the final and correct information, and often practice is simply based on whatever the moment demands—i.e., there is no policy, and everyday practice varies case to case. Attorneys will typically stand on multiple cases in a row and therefore may not be able to leave the well area to speak to each defendant’s family or friends individually. Instead, an attorney might turn around between cases to mouth the dollar amounts or to ask family/friends to wait to discuss specific details. Some defense organizations have forms they give family members with details, or the amounts/types of bail, but there is not currently any reliable and consistent way to ensure those forms are given to those paying bail. In the Bronx, CJA bail expeditors staff an information counter. The number to this counter is provided to defendants’ family and friends. Staff assist by providing estimated arraignment times and, post-arraignment, arraignment outcomes, bail amounts and bail posting information both in the court and at DOC. The Bronx is the only borough where this service currently exists.

- **Recommendation #3a.** *Create a one-page information sheet that includes space to record the amount and types of bail actually set; what information about the defendant will be required (i.e., unique person and case identifiers) and how to locate that information; what information about the bail payer will be required (i.e., photo ID); commissary and self-bail payment options; and bail payment options in court and at DOC facilities (including the exact locations of bail/cashiers windows at each location and any restrictions on access). These forms should be completed by defense attorneys, who are in the best position to get the information to family/friends quickly. Correctional officers should give a copy of this sheet to each defendant as well.*
- **Recommendation #3b.** *Expand CJA information counters to all five boroughs. These would be an additional source of information for family and friends, and relieve some of the burden on defense attorneys for tracking and conveying all bail payment information.*

**Finding #4. Defense attorneys are not uniformly aware of the potentially helpful role of bail expeditors in facilitating payment.** In all boroughs except Staten Island, CJA operates a bail-expediting program. CJA bail expeditors assist defendants who have bail set at \$3,500 or less (\$2,500 or less in the Bronx) by contacting potential bail payers and helping these family and friends pay bail while the defendant is still being held at the courthouse. There are bail expeditors in courthouses during all hours court is in session. Bail expeditors are also the sole party that communicates “hold” requests to DOC. This is a

request that defendants *not* be transported to Rikers Island because bail is likely to be paid at the courthouse in the immediate future. CJA bail expeditors do this after speaking with defendants' family and friends post-arraignment and ascertaining a likelihood of bail payment; at the request of defense attorneys; and at the request of the bail fund staff. Not all defense attorneys were aware of CJA bail expeditors' roles in locating bail payers or in placing "holds" to prevent defendants from being taken to Rikers.

- **Recommendation #4.** *Expand awareness of bail expeditors' roles and locations in courthouses to the defense bar, whether through increased training by CJA or supervisors at the defense organizations.*

**Finding #5. CJA bail "holds" are not long enough.** DOC transports detained defendants by bus to Rikers Island every four hours. CJA can place "holds" on defendants for whom bail payment has been promised by a friend or family member, in theory allowing defendants to remain at the courthouse through the next bus's departure and extending the time they have to post bail at the courthouse. These holds are for three hours maximum in Manhattan and two hours maximum in other boroughs. This limited duration, however, makes it logistically difficult for bail payers to gather the sums of cash required to post bail before the defendant is transported to Rikers Island.

- **Recommendation #5.** *Extend the window of time allowed for "holds" before transporting defendants to Rikers Island. Even a few hours could increase the likelihood of posting bail at the courthouse, where stakeholders unanimously felt the process was smoother, quicker, and more transparent than at Rikers Island or other detention facilities run by the Department of Correction.*

**Finding #6. Bail "holds" are not consistently and uniformly honored for the full window of time formally allowed.** Many stakeholders reported that DOC staff do not uniformly honor "hold" requests and instead often put defendants on the next departing bus to Rikers Island regardless of timing. In practice, a failure to consistently honor hold requests means that defendants are irregularly and unpredictably transported to DOC facilities based more on convenience than structured decision-making. Convenience-based practice was particularly common in the Bronx and in Brooklyn, where defense attorneys, family members, and bail fund staff reported having funds to post bail at court within the two-hour "hold" window but being unable to do so because the defendant had been prematurely transported to Rikers Island.

- **Recommendation #6a.** *Create consistent policy and practice among CJA, DOC and Unified Court System (UCS) staff to ensure that “holds” are clearly communicated to all staff, are tracked and honored in every instance, and are not disregarded due to transportation convenience or other issues. CJA should be given the authority to ensure that these policies are set and enforced.*
- **Recommendation #6b.** *Establish an office to receive complaints of violations of “holds,” to track these complaints, and to draft quarterly reports for the Mayor’s Office of Criminal Justice (MOCJ) and the New York City Council detailing the number and context for “hold” violations. CJA is well-positioned to provide these additional services as part of its contract with the city.*

**Finding #7. The bail windows at the courthouses are not open at all times, which leads some defendants to be transported to Rikers Island who might otherwise have had bail posted at court.** The cashiers’ windows are only open and able to accept bail payment during the same daytime hours that court is in operation—9:00 a.m to 1:00 p.m. and then again from 2:15 p.m. to 4:00 p.m. or 4:30 p.m. During the night shift, starting at 5:00 p.m., bail payment is usually done directly in the courtroom. However, that option is not universally available across all boroughs until court closes at 1:00 a.m. In Queens and Brooklyn, for instance, clerks stop accepting bail payments between 9:30 p.m. and 10:00 p.m. At the Hall of Justice in the Bronx, where cases are calendared for all appearances following arraignment, the bail window closes between 12:30 p.m. and 2:00 p.m., and then closes for the day at 4:00 p.m. (even though court sometimes runs until after 6:00 p.m.). The closure of the windows during lunch means that bail cannot be paid during that time and that defendants for whom bail has been set prior to the 75-minute lunch period might be transported to Rikers Island before family members or friends have any opportunity to effect payment. This problem also applies to defendants arraigned just before the period when the window is closed for the day and before the courtroom bail payment option is available, and again just prior to and after the time when clerks stop accepting courtroom-based bail payment. Defendants whose cases are heard closest to the end of the day’s calendar have no chance to pay at the court at all.

- **Recommendation #7.** *Ensure that courtroom-based payment is available until court is no longer in session for the day. Stagger cashiers’ lunchtimes so that the bail payment window can remain open during the middle of the day and immediately*

*preceding the night shift, until the courtroom-based payment option is available, so that the window is not closed completely at any point of the working day.*

**Finding #8. Dollar bail is a common workaround that creates significant confusion for defendants, families/friends, and attorneys.** When a defendant has two cases open simultaneously, where one is more serious, defense attorneys will often ask that a \$1 bail be set on the more minor case. This practice allows the time the defendant is spending incarcerated pending the outcome of the more serious case to be counted toward the less serious case. A \$1 bail is also a mechanism for ensuring that DOC produces the defendant for the more minor case, given that there is no other existing mechanism for ensuring that a defendant is produced for court appearances on cases for which they are ROR'd if they are in custody on other cases. The potential perverse result, as stakeholders explained, is that defendants or their families or friends pay the larger bail, are unaware of the \$1 bail, and defendants continue to be held on what is essentially an administratively-driven bail amount.

- **Recommendation #8.** *Develop strategies to avoid pretrial detention for \$1 bail. The simplest solution to the problem would be for UCS and DOC to find a way to credit a defendant held on one case for all cases. In the short term, most parties interviewed believed that the best way to resolve the problems posed by \$1 bail was a special calendar to be held at the end of the day, where attorneys might advance cases so that the holds could be changed from \$1 bail to ROR, allowing defendants to be released on \$1 bail cases. (Although recommended by some, the criminal procedure law does not allow for an administrative hold alternative to \$1 bail.)*

**Finding #9. There is too much confusion and uncertainty about the actual location of defendants.** DOC tracks defendants largely by paper. In order for the court to accept bail payment, cashiers have to call DOC officers to make sure that the defendant is still at the courthouse and not in transit to Rikers Island. Attorneys in all boroughs reported instances where they or bail payers were told (either by court or DOC employees) that defendants were already en route to Rikers, when the defendants were still physically in the court building. This process is likewise confusing for bail payers. Attorneys detailed accounts of bail payers going to Rikers Island to pay bail only to be told that the defendant had still not left court, returning to court and being told that, by then, the defendant was at Rikers Island, etc. An inability to consistently verify and convey accurate information to

family members and friends concerning whether the defendant is at the courthouse or in transit should be considered by all parties to be unacceptable.

- **Recommendation #9.** *Move to a computerized system that accounts for both case-based and person-based identifiers, and which can be accessed by both UCS and DOC employees. The goal should be to tell all parties—in real time—where defendants are physically held to avoid unnecessary trips to Rikers Island for defendants, defense attorneys, and bail payers.*

**Finding #10. DOC’s paper-based system is antiquated and leads to barriers and delays in paying bail.** Stakeholders unanimously believed that DOC’s paper-based system makes every step of the process longer and more difficult. Defendants are tracked with paper files. All holds and bail payments are tracked in a log book, a hard-copy appointment calendar that officers have to review manually. In fact, in cases where bail is not paid at the courthouse, and friends or family members must pay bail at Rikers Island or other DOC facilities, the entire bail payment process is done manually, with sporadic use of different computer systems; as a result, this process typically takes from eight to ten hours.

- **Recommendation #10.** *Move to a comprehensive computer-based system. In particular, a new system with scanning capability would decrease the time that DOC officers and civilian staff must spend tracking and verifying data and defendant whereabouts by hand.*

**Finding #11. Online bail payment is rendered impossible by DOC’s requirement that all bail payers provide identification in-person.** To initiate the bail payment process, all bail payers must fill out a “surety form” by hand, in person. This form includes key defendant-related identifiers and information about the bail payers themselves. According to DOC officials, all bail payers must confirm that the DOC photo on record matches the identity of the person they are intending to bail out to avoid release of incorrect detainees. All bail payers must also present their own government-issued ID (DOC accepts city and state IDs and passports), which is copied and added to the paper file to deter

bail for purposes of retaliation.<sup>9</sup> These three things ensure that an online bail system is nearly impossible. The latter also makes it impossible for many non-legal residents to post bail.

- **Recommendation #11.** *Determine whether a full-scale online bail payment system, or a partial online system, is possible. Some of the processes listed above may not in fact be legally mandatory, but merely current standard practice. DOC already uses a computer system that logs and tracks visitors, so that those who come to visit an inmate only have to fill out paperwork once and thereafter just present their IDs. A similar system for bail payment, including the option to facilitate the process by filling out the surety form online or via fax, could save an enormous amount of time. (Currently, all paperwork must be completed in person and on each occasion when an individual or entity, such as a bail fund, seeks to pay bail, including \$1 bail.) Over the long haul, we recommend that stakeholders explore the question of how identities might be verified electronically to support online bail payment.*

**Finding #12. The bail payment and release process at DOC facilities is too long.** The bail payment and release process at DOC facilities can take 8 to 10 hours from the point where the bail payer first fills out paperwork to the point when the inmate is released. Defendants are regularly released in the middle of the night, sometimes after midnight. This is especially problematic for those who reside in homeless shelters, where residents must be in by 10:00 p.m. DOC is severely understaffed in offices where bail is paid, meaning that frontline and ranking officers are asked to cover multiple posts. This contributes to staff burnout. Moreover, DOC presently accords relatively low priority to processing bail payment in the face of other requirements like inmate transportation; inmate altercations or illnesses; and tour changes, all of which require the attention of staff and periodically pausing the bail payment process. Given a recent reduction in the overall jail inmate population, it should now be possible to reallocate DOC staff in order to adequately staff the bail payment process.

- **Recommendation #12.** *DOC should explore the creation of a time expectation and compliance-monitoring system for bail payment. Such a system could have time stamps, tracking the initial request for the production of an inmate and the time when*

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<sup>9</sup> DOC expressed concern about the liability involved in allowing unidentifiable and untraceable individuals to bail out inmates due to a concern that a rival gang member seeking revenge, or an individual hoping to harm or kill an inmate for some reason, might bail them out in order to do so.

*the defendant is released, and offer a number for bail payers or defendants to call when DOC takes an excessive amount of time.*

**Finding #13. Bail payers do not receive clear information regarding the bail payment process at DOC facilities.**

Similar to the confusion about bail payment procedures at the courthouse, bail payers have access to limited information about the steps and timeline involved in the bail payment process at DOC facilities. Figure 2 details this process. While online options do exist for family and friends to locate bail amounts and inmate locations, stakeholders report that in practice very few people access these options. The confusion about procedures means that many family members or friends wait at the facility without knowledge of where they are in the process, or when (or even if) the defendant they are bailing out will eventually be released.

- **Recommendation #13.** *Make information available in multiple languages via flyers and posters at both the courthouse and DOC facilities clearly outlining the steps, requirements, and timeline for paying bail. Correctional staff should provide regular status updates for those waiting to pay bail.*

**Finding #14. Many defense attorneys and other non-DOC staff are unaware of additional options for paying bail—specifically, commissary accounts that allow defendants to self-pay bail.**

Many stakeholders believed that moving to an online bail payment system would dramatically improve payment rates and decrease unnecessary detention. Very few of the participants in this study knew of an existing process whereby money can be added to defendants' commissary accounts online and then subsequently used to self-pay bail.

- **Recommendation #14.** *Provide all involved, from defense attorneys to defendants to bail payers, with accurate information about how to execute each step of the process for detainees to self-pay bail using money deposited into their commissaries. This process should be considered a useful interim alternative to the lengthy in-person payment option.<sup>10</sup>*

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<sup>10</sup> Any materials should make clear that all outstanding fees incurred during detention (i.e., for phone calls, behavior infractions, etc.) are automatically deducted at the time money is deposited

**Finding #15. Waiting areas in some DOC facilities are inhospitable.** Some of the borough-based detention facilities (e.g. the Vernon C. Bain Center in the Bronx) have no bathrooms, vending machines, or water fountains and are so small that families with children are particularly challenged by the long waits.

- **Recommendation #15.** *Serious attention should be paid to upgrade the waiting areas so that DOC facilities are more hospitable to those waiting long hours in an effort to pay bail. In general, following principles of procedural justice,<sup>11</sup> DOC should seek to establish waiting areas and a waiting process that is likely to leave bail payers feeling that they were treated with dignity and respect.*

**Finding #16. Bail payment at Rikers Island is typically not feasible prior to the initiation of the defendant intake process (which can last 16 hours).** A decades-old consent decree required DOC staff to process and house defendants within 24 hours of remand. Though the consent decree was vacated in 2001, these regulations have been incorporated into Board of Correction minimum standards and put considerable time pressure on all involved. Defense attorneys report that once a defendant arrives at Rikers Island for intake, there is sometimes a short window of time before the onsite intake process has actually started when bail could be posted. This moment in time would be particularly helpful to bail payers who were ready to make payment on the day of arraignment but could not effect payment at the courthouse. However, under current practice the timing has to be perfect. If the defendant is in transport between court and Rikers Island the officers or payment clerks at Rikers will not accept payment. And once intake starts at Rikers Island it must be completed, a process which can take 16 hours. Ideally, a window of time would exist after the defendant has arrived at Rikers Island but before the intake process has commenced. Based on stakeholder interviews, it may be unfeasible to pause the intake process as long as the 24-hour time window is in effect.

- **Recommendation #16. Make bail payment an option at Rikers Island before the lengthy intake process begins.** *Extending the current 24-hour time window from remand to housing to maximize existing windows of opportunity for bail*

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in defendants' accounts, so all bail payers and defendants should ascertain ahead of time what these fees are and add them to the total needed to post bail.

<sup>11</sup> See, for example, Tyler, T. R. and Huo, Y. J. 2002. *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York, NY: Russell-Sage Foundation.

*payment would be useful, potentially enabling a family member or friend who is present at Rikers Island to pay bail prior to the lengthy intake process. Given the paper system currently in use, it is challenging for a bail payer to know with certainty either where the defendant is located or how far the defendant has progressed in the intake process. Expanding the time window at Rikers will probably require changes to Board of Correction minimum standards and moving to a computer-based system that would allow for accurate identification of defendants' whereabouts. Nonetheless, providing defendants a way to pay bail immediately before or during the intake process would free up time and dollars, and decrease unnecessary detention in the long run.*

**Finding #17. Actual payment of bail at DOC facilities is difficult due to inaccessible locations and inoperable fax machines.** Once a defendant is in DOC custody, bail can currently only be posted at Rikers Island or one of the borough-based DOC facilities. Many of these are physically difficult to reach (particularly Rikers Island and the Vernon C. Bain Center). While bail payers can post bail at any DOC facility, all information and paperwork must currently be transmitted multiple times by fax from the site where the bail payer is to the site where the detainee is being held. For example, if the defendant is detained on Rikers Island but a family member seeks to pay bail at the Vernon C. Bain Center, staff from these two sites must exchange multiple faxes during the process. All stakeholders agree that the fax machines are often broken and that when this happens the entire process halts until the fax machines are working again. Moreover, the fact that family members or friends can pay bail at a location other than where the defendant is detained raises the question of why family members or friends cannot choose to do so at the courthouses, which are generally more convenient than DOC facilities, more hospitable, and less prone to machine breakdowns.

- **Recommendation #17.** *Implement a computer-based system to increase efficiency and widen options for posting bail. A computer-based system, as previously recommended, would increase the efficiency of off-site bail posting and decrease the time and difficulty of posting bail. Additionally, the existence of such a system could allow for the expansion of sites where bail could be posted, including at the court houses, which are generally more easily-accessible than Rikers Island or the other city detention centers.*

# Appendix A. Semi-Structured Stakeholder Interview Protocol

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1. Step me through your role in the process of how bail is set and/or posted.
2. What information do you contribute prior to arraignment that influences the bail setting process?
  - a. How do you gather that information?
  - b. How is it relayed to the judge/attorneys?
3. Once bail has been set, what is your role at that point?
4. What does your staff do? Step me through how they would approach a typical case.
5. What are they discussing with those paying bail on behalf of defendants?
6. Are there any forms you use as part of these processes?
7. How routinized is the process typically?
8. Does it veer from this routine often? If so, when/how/why?
9. What are typical roadblocks to the posting of bail?
10. What, if any, problems do you identify in the bail posting process?
11. What, if any, suggestions do you have for making the process more efficient and effective for defendants and those posting bail on their behalf?
12. Who else do you think we should speak to as we try to figure out this process and existing impediments to posting bail?

# Appendix B. Defense Attorney Focus Group Protocol

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1. Step me through the process of how bail is set. What do you speak with your client about?
2. How much information do you have in advance of the court appearance about the amount and type of bail that will be set?
3. What information about bail posting do you discuss before and after arraignments with your clients and their family and friends in the audience?
4. Is there a form you use to convey any of this information?
5. Do arraignment coordinators play any particular role in this process?
6. Do bail expeditors play any particular role in this process?
7. How do you decide what type of bail you'll request?
8. How routinized is the process typically? Is there a typical spiel you give clients?
9. Does it veer from this routine often? If so, when/how/why?
10. What, if any, problems do you as defense attorneys identify in the bail posting process, both while your client is still held at court and then at DOC facilities?
11. What, if any, suggestions do you have for making the process more efficient and effective for defendants and those paying bail on their behalf?
12. Who else do you think we should speak to as we try to figure out this process and existing impediments to defendants posting bail?