CONTINUING LEGAL EDUCATION

FALL 2017

OCTOBER 19, 2017

"RIKERS AND BEYOND"

Documentary Film "Rikers: An American Jail" and Discussion of Challenges and Issues to be Addressed in Implementing the Recommendation to Close the Jail at Rikers Island

Kirk James, DSW - Moderator
Elizabeth Bender, Esq., Mika Dashman, Esq.,
Martin F. Horn, Jordyn Lexton, and Michael Rempel

Sponsored by:
Appellate Division, First Department and the
Assigned Counsel Plan for the First Department
in conjunction with
New York Women's Bar Association Criminal Law Committee and the
NYU School of Law Center for Research in Crime and Justice

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 other 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,

Jonathan Lippman

The Hon. Jonathan Lippman

Contents

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-seat-

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-seat-

ed 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's 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's 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 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 transportation and infrastructure 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 neigh-borhoods 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 more than 100,000 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 defendant's 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 to 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 Blacks 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's 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 tech-

nology 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 $11 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 training academy for correction officers 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

Rikers Island should be transformed from a blight to an asset. As the City looks to the future development of 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, 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, diverting waste from landfills, and removing untreated wastewater from our rivers.

These uses could 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 30,000 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 a 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 rename 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 other 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.

NY CLS CPL, Pt. THREE, Title P, Art. 500 [1]

Current through 2017 released chapters 1-331

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—

§ 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.

---

[1] Selected provisions only. Content as it appears in the Consolidated Laws Service has been edited for space. Practice Commentary, case annotations and other resources are not included.

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.

§ 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.

NY CLS CPL § 510.15

Current through 2017 released chapters 1-331

Notice

This section has more than one version with varying effective dates.

First of two versions of this section.

§ 510.15. Commitment of principal under sixteen [Effective until October 1, 2018]

1. When a principal who is under the age of sixteen is committed to the custody of the sheriff the court must direct that the principal be taken to and lodged in a place certified by the state division for youth as a juvenile detention facility for the reception of children. Where such a direction is made the sheriff shall deliver the principal in accordance therewith and such person shall although lodged and cared for in a juvenile detention facility continue to be deemed to be in the custody of the sheriff. No principal under the age of sixteen to whom the provisions of this section may apply shall be detained in any prison, jail, lockup, or other place used for adults convicted of a crime or under arrest and charged with the commission of a crime without the approval of the state division for youth in the case of each principal and the statement of its reasons therefor. The sheriff shall not be liable for any acts done to or by such principal resulting from negligence in the detention of and care for such principal, when the principal is not in the actual custody of the sheriff.
2. Except upon consent of the defendant or for good cause shown, in any case in which a new securing order is issued for a principal previously committed to the custody of the sheriff pursuant to this section, such order shall further direct the sheriff to deliver the principal from a juvenile detention facility to the person or place specified in the order.

History

Add, L 1978, ch 481, § 43; amd, L 1979, ch 411, § 12, eff Aug 4, 1979; L 1980, ch 359, § 1, eff June 23, 1980.

Notes

Editor's Notes

***Laws 2017, ch 59, § 106* (Part WWW)**, eff April 10, 2017, provides:

§ 106. This act shall take effect immediately; provided that:

a. sections forty-eight and forty-eight-a of this act shall take effect on the one hundred eightieth day after this act shall have become a law and shall be deemed to apply to offenses committed prior to, on, or after such effective date;

b. sections one through thirty, thirty-one-a, thirty-one-b, thirty-two, thirty-five, thirty-six, thirty-eight, forty-a, forty-one, forty-three, forty-four, fifty-six, fifty-six-a, fifty-six-b, fifty-seven, fifty-nine, sixty-one through sixty-three, sixty-five, sixty-seven, sixty-nine, seventy, seventy-two, seventy-five through seventy-eight, seventy-nine, seventy-nine-b, eighty, eighty-one-b, eighty-two-a, ninety-nine, one hundred, one hundred-a and one hundred one of this act shall take effect October 1, 2018; provided however, that when the applicability of such provisions are based on the conviction of a crime or an act committed by a person who was seventeen years of age at the time of such offense such provisions shall take effect October 1, 2019;

c. sections one hundred two and one hundred four shall take effect April 1, 2018;

d. the amendments to subdivision 4 of *section 353.5 of the family court act* made by section seventy-two of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 11 of subpart A of part G of chapter 57 of the laws of 2012, as amended, when upon such date the provisions of section seventy-three of this act shall take effect;

e. the amendments to the second undesignated paragraph of subdivision 4 of *section 246 of the executive law* made by section one hundred two of this act shall be subject to the expiration and reversion of such undesignated paragraph as provided in subdivision (aa) of section 427 of chapter 55 of the laws of 1992, as amended, when upon such date section one hundred three of this act shall take effect; provided, however if such date of reversion is prior to April 1, 2018, section one hundred three of this act shall take effect on April 1, 2018; and

f. the amendments to *section 153-k of the social services law* made by section one hundred-a of this act shall not effect the repeal of such section and shall be deemed to repeal therewith.

Amendment Notes

The 2017 amendment, by ch 59, § 36 (Part WWW), substituted "seventeen or eighteen" for "sixteen" in the section heading; in 1, substituted "office of children and family services" for "state division for youth" in the first sentence, added the second sentence, and in the fourth sentence, substituted "under the age of specified" for "under the age of sixteen" and "office of children and family services shall consult with the commission of correction if the principal is sixteen years of age or older" for "state division for youth."

§ 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.

§ 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.

§ 510.40. Application for recognizance or bail; determination thereof, form of securing order and execution thereof

1. An application for recognizance or bail must be determined by a securing order which either:
   (a) Grants the application and releases the principal on his own recognizance; or
   (b) Grants the application and fixes bail; or
   (c) Denies the application and commits the principal to, or retains him in, the custody of the sheriff.
2. Upon ordering that a principal be released on his own recognizance, the court must direct him to appear in the criminal action or proceeding involved whenever his attendance may be required and to render himself at all times amenable to the orders and processes of the court. If such principal is in the custody of the sheriff or at liberty upon bail at the time of the order, the court must direct that he be discharged from such custody or, as the case may be, that his bail be exonerated.
3. Upon the issuance of an order fixing bail, and upon the posting thereof, the court must examine the bail to determine whether it complies with the order. If it does, the court must, in the absence of some factor or circumstance which in law requires or authorizes disapproval thereof, approve the bail and must issue a certificate of release, authorizing the principal to be at liberty, and, if he is in the custody of the sheriff at the time, directing the sheriff to discharge him therefrom. If the bail fixed is not posted, or is not approved after being posted, the court must order that the principal be committed to the custody of the sheriff.

History

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

§ 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;[.][2]

History

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).

§ 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 amendable 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.

The bracketed punctuation has been inserted by the Publisher.

§ 520.20. Bail and bail bonds; posting of bail bond and justifying affidavits; form and contents thereof

1.

(a) Except as provided in paragraph (b) when a bail bond is to be posted in satisfaction of bail, the obligor or obligors must submit to the court a bail bond in the amount fixed, executed in the form prescribed in subdivision two, accompanied by a justifying affidavit of each obligor, executed in the form prescribed in subdivision four.

(b) When a bail bond is to be posted in satisfaction of bail fixed for a defendant charged by information or simplified information or prosecutor's information with one or more traffic infractions and no other offense, the defendant may submit to the court, with the consent of the court, an insurance company bail bond covering the amount fixed, executed in a form prescribed by the superintendent of financial services.

2. Except as provided in paragraph (b) of subdivision one, a bail bond must be subscribed and sworn to by each obligor and must state:

(a) The name, residential address and occupation of each obligor; 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 obligor, or the obligors jointly and severally, 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) That in the event that the principal does not comply with any such requirement, order or process, such obligor or obligors will pay to the people of the state of New York a designated sum of money fixed by the court.

3. A bail bond posted in the course of a criminal action is effective and binding upon the obligor or obligors until the imposition of sentence or other termination of the action, regardless of whether the action is dismissed in the local criminal court after an indictment on the same charge or charges by a superior court, and regardless of whether such action is partially conducted or prosecuted in a court or courts other than the one in which the action was pending when such bond was posted, unless prior to such termination such order of bail is vacated or revoked or the principal is surrendered, or unless the terms of such bond expressly limit its effectiveness to a lesser period; provided, however, the effectiveness of such bond may only be limited to a lesser period if the obligor or obligors submit notice of the limitation to the court and the district attorney not less than fourteen days before effectiveness ends.

4. A justifying affidavit must be subscribed and sworn to by the obligor-affiant and must state his name, residential address and occupation. Depending upon the kind of bail bond which it justifies, such affidavit must contain further statements as follows:

(a) An affidavit justifying an insurance company bail bond must state:

(i) The amount of the premium paid to the obligor; and

(ii) All security and all promises of indemnity received by the surety-obligor in connection with its execution of the bond, and the name, occupation and residential and business addresses of every person who has given any such indemnifying security or promise.

An action by the surety-obligor against an indemnitor, seeking retention of security deposited by the latter with the former or enforcement of any indemnity agreement of a kind described in this sub-

paragraph, will not lie except with respect to agreements and security specified in the justifying affidavit.

(b) An affidavit justifying a secured bail bond must state every item of personal property deposited and of real property pledged as security, the value of each such item, and the nature and amount of every lien or encumbrance thereon.

(c) An affidavit justifying a partially secured bail bond or an unsecured bail bond must state the place and nature of the obligor-affiant's business or employment, the length of time he has been engaged therein, his income during the past year, and his average income over the past five years.

History

Add, L 1970, ch 996, § 1, eff Sept 1, 1971; amd, L 1973, ch 927, § 1, eff Sept 1, 1973; L 1974, ch 425, § 1; L 1981, ch 145, § 1, eff June 25, 1981; L 1981, ch 268, § 1, eff Aug 19, 1981; *L 2011, ch 62, § 104* (Part A), eff Oct 3, 2011.

§ 520.30. Bail and bail bonds; examination as to sufficiency

1. Following the posting of a bail bond and the justifying affidavit or affidavits or the posting of cash bail, the court may conduct an inquiry for the purpose of determining the reliability of the obligors or person posting cash bail, the value and sufficiency of any security offered, and whether any feature of the undertaking contravenes public policy; provided that before undertaking an inquiry, of a person posting cash bail the court, after application of the district attorney, must have had reasonable cause to believe that the person posting cash bail is not in rightful possession of money posted as cash bail or that such money constitutes the fruits of criminal or unlawful conduct. The court may inquire into any matter stated or required to be stated in the justifying affidavits, and may also inquire into other matters appropriate to the determination, which include but are not limited to the following:

(a) The background, character and reputation of any obligor, and, in the case of an insurance company bail bond, the qualifications of the surety-obligor and its executing agent; and

(b) The source of any money or property deposited by any obligor as security, and whether any such money or property constitutes the fruits of criminal or unlawful conduct; and

(c) The source of any money or property delivered or agreed to be delivered to any obligor as indemnification on the bond, and whether any such money or property constitutes the fruits of criminal or unlawful conduct; and

(d) The background, character and reputation of any person who has indemnified or agreed to indemnify an obligor upon the bond; and whether any such indemnitor, not being licensed by the superintendent of financial services in accordance with the insurance law, has within a period of one month prior to such indemnity transaction given indemnification or security for like purpose in more than two cases not arising out of the same transaction; and

(e) The source of any money posted as cash bail, and whether any such money constitutes the fruits of criminal or unlawful conduct; and

(f) The background, character and reputation of the person posting cash bail.

2. Upon such inquiry, the court may examine, under oath or otherwise, the obligors and any other persons who may possess material information. The district attorney has a right to attend such inquiry, to call witnesses and to examine any witness in the proceeding. The court may, upon application of the district attorney, adjourn the proceeding for a reasonable period to allow him to investigate the matter.

3. At the conclusion of the inquiry, the court must issue an order either approving or disapproving the bail.

History

Add, L 1970, ch 996, § 1; amd, L 1984, ch 384, § 3, eff Sept 1, 1984; L 2011, ch 62, § 104 (Part A), eff Oct 3, 2011.

§ 530.20. Order of recognizance or bail; by local criminal court when action is pending therein

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

1. When the defendant is charged, by information, simplified information, prosecutor's information or misdemeanor complaint, with an offense or offenses of less than felony grade only, the court must order recognizance or bail.

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

   (a) A city court, a town court or a village court may not order recognizance or bail when (i) the defendant is charged with a class A felony, or (ii) it appears that the defendant has two previous felony convictions;

   (b) No local criminal court may order recognizance or bail with respect to a defendant charged with a felony unless and until:

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

      (ii) The court has been furnished with a report of the division of criminal justice services concerning the defendant's criminal record if any or with a police department report with respect to the defendant's prior arrest record. If neither report is available, the court, with the consent of the district attorney, may dispense with this requirement; provided, however, that in an emergency, including but not limited to a substantial impairment in the ability of such division or police department to timely furnish such report, such consent shall not be required if, for reasons stated on the record, the court deems it unnecessary. When the court has been furnished with any such report or record, it shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.

History

Add, L 1970, ch 996, § 1; amd, L 1971, ch 762 § 12; L 1972, ch 399, § 23; L 1972, ch 661, § 45, eff Sept 1, 1972; L 1975, ch 531, § 2, eff Aug 28, 1975; L 1979, ch 218, § 1, eff Jan 1, 1980.

§ 530.30. Order of recognizance or bail; by superior court judge when action is pending in local criminal court

1. When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, a judge of a superior court holding a term thereof in the county, upon application of a defendant, may order recognizance or bail when such local criminal court:

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

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

(c) Has fixed bail which is excessive. In such case, such superior court judge may vacate the order of such local criminal court and release the defendant on his own recognizance or fix bail in a lesser amount or in a less burdensome form.

2. Notwithstanding the provisions of subdivision one, when the defendant is charged with a felony in a local criminal court, a superior court judge may not order recognizance or bail unless and until the district attorney has had an opportunity to be heard in the matter and such judge has been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20.

3. Not more than one application may be made pursuant to this section.

History

Add, L 1970, ch 996, § 1, eff Sept 1, 1971; amd, L 1971, ch 762 § 13, eff Sept 1, 1971.

§ 530.40. Order of recognizance or bail; by superior court when action is pending therein

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

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

2. When the defendant is charged with a felony, the court may, in its discretion, order recognizance or bail. In any such case in which an indictment (a) has resulted from an order of a local criminal court holding the defendant for the action of the grand jury, or (b) was filed at a time when a felony complaint charging the same conduct was pending in a local criminal court, and in which such local criminal court or a superior court judge has issued an order of recognizance or bail which is still effective, the superior court's order may be in the form of a direction continuing the effectiveness of the previous order.

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

4. Notwithstanding the provisions of subdivision two, a superior court may not order recognizance or bail when the defendant is charged with a felony unless and until the district attorney has had an opportunity to be heard in the matter and such court has been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20.

History

Add, L 1970, ch 996, § 1, eff Sept 1, 1971; amd, L 1971, ch 762, § 14, eff Sept 1, 1971; L 2000, ch 1, § 12, eff Feb 1, 2001 (see 2000 note below); L 2003, ch 264, § 46, eff Nov 1, 2003.

§ 530.60. Order of recognizance or bail; revocation thereof

1. Whenever in the course of a criminal action or proceeding a defendant is at liberty as a result of an order of recognizance or bail issued pursuant to this chapter, and the court considers it necessary to review such order, it may, and by a bench warrant if necessary, require the defendant to appear before the court. Upon

such appearance, the court, for good cause shown, may revoke the order of recognizance or bail. If the defendant is entitled to recognizance or bail as a matter of right, the court must issue another such order. If he or she is not, the court may either issue such an order or commit the defendant to the custody of the sheriff. Where the defendant is committed to the custody of the sheriff and is held on a felony complaint, a new period as provided in section 180.80 of this chapter shall commence to run from the time of the defendant's commitment under this subdivision.

2.

(a) Whenever in the course of a criminal action or proceeding a defendant charged with the commission of a felony is at liberty as a result of an order of recognizance or bail issued pursuant to this article it shall be grounds for revoking such order that the court finds reasonable cause to believe the defendant committed one or more specified class A or violent felony offenses or intimidated a victim or witness in violation of sections 215.15, 215.16 or 215.17 of the penal law while at liberty. Before revoking an order of recognizance or bail pursuant to this subdivision, the court must hold a hearing and shall receive any relevant, admissible evidence not legally privileged. The defendant may cross-examine witnesses and may present relevant, admissible evidence on his own behalf. Such hearing may be consolidated with, and conducted at the same time as, a felony hearing conducted pursuant to article one hundred eighty of this chapter. A transcript of testimony taken before the grand jury upon presentation of the subsequent offense shall be admissible as evidence during the hearing. The district attorney may move to introduce grand jury testimony of a witness in lieu of that witness' appearance at the hearing.

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

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

(ii) Until the charges contained within the accusatory instrument have been reduced or dismissed such that no count remains which charges the defendant with commission of a felony; or

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

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

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

History

Add, L 1970, ch 996, § 1, eff Sept 1, 1971; amd, L 1981, ch 788, § 2, eff July 27, 1981; L 1986, ch 794, § 3, eff Nov 1, 1986; L 2011, ch 565, § 1, eff Oct 23, 2011.

THE LIBERTY FUND

Mission Statement

The Liberty Fund is dedicated to reducing the number of New Yorkers subjected to pretrial detention due to their inability to post bail. We will achieve this by providing bail to any qualifying client who's charged with a misdemeanor and cannot afford to pay bail when it's set at $2000 or less. The Liberty Fund will reduce the pretrial jail population and will prevent the poorest New Yorkers from having their lives and freedom upended by a misdemeanor charge.

Goals of Liberty Fund

To reduce the number of New Yorkers subjected to pretrial detention.

To maintain the presumption of innocence by allowing clients the freedom and choice to contest charges against them.

To support clients in other aspects of their lives through voluntarily provided services.

We are focused on the direct impact the Liberty Fund has on the lives and outcomes for all of our clients and the community we live in.

Our Work

Who we are:

The Liberty Fund is a non-profit organization consisting of licensed bail bond agents. We operate citywide with offices in Manhattan, Brooklyn, Bronx, and Queens.

What we do:

The Liberty Fund is a registered 501 (c)(3) not for profit organization that is the first citywide charitable bail fund in New York City. The Liberty Fund is designed and dedicated to reduce the number of New Yorkers subjected to pretrial detention at Rikers Island simply because they are unable to post bail.

Who are our clients?

If you are arrested in New York City and your bail has been set by the court, the Liberty Fund may post your bail if all of the following four factors exist:

1. Your bail has been set at $2000 or less and are financially unable to post bail
2. You are assessed as an appropriate client by a Liberty Fund Bail Associate.
3. You agree to participate in the Liberty Fund's client needs interview and voluntary referral process
4. You are charged with a misdemeanor UNLESS it is on the following excludable cases/charges list
   -PL 120.45 (stalking 4th degree)
   -PL 120.50 (stalking 3rd degree)
   -PL 130.20 (sexual misconduct)
   -PL 130.52 (forcible touching)
   -PL 130.55 (sexual abuse 3rd degree)
   -PL 130.60 (sexual abuse 2nd degree)
   -PL 205.05 (escape 3rd degree)
   -PL 215.10 (tampering with a witness 4th degree)
   -PL 215.55 (bail jumping 3rd degree)
   -PL 230.20 (promoting prostitution 4th degree)
   -PL 245.00 (public lewdness)
   -PL 260.10 (endangering the welfare of a child)

Procedures

Bail Procedures

The Liberty Fund is able to post bail on behalf of individuals that meet the requirements set forth by the federal and state laws of New York concerning charitable bail funds. These criteria are set forth in the previous section entitled *"Who are our clients?"*

After Bail

After the Liberty Fund posts bail for a client, the client will submit to an interview with a bail bond associate. This interview will include questions that are included in the risk assessment as well as additional questions. This interview will aid in determining what services might be

helpful to the client. The Liberty Fund has a library of resources available to clients. These resources include but are not limited to the following areas:

- Housing
- Substance Abuse
- Mental Health
- Education
- Immigration
- Domestic Violence
- Entitlements

These resources and services are voluntary and may be used at the client's own discretion.

The Liberty Fund will maintain some contact with the clients following the posting of bail. This contact will include contacting clients with reminders of their court dates. This reminder will be done at least two times prior to the client's court date including the day before the date. The client may consent to the Liberty Fund contacting another party such as a friend or family member with reminders of court dates.

Services

The Liberty Fund maintains a library of resources that may be helpful for clients. These resources include a wide range of services that clients may find helpful. The Liberty Fund has identified areas in which clients may benefit from services. These services include but are not limited to the following areas: housing, substance abuse, mental health, education, immigration, domestic violence, and entitlements. These services are completely voluntarily. Clients are not required to participate in these services and their choice to partake (or not partake) in these services does not have any bearing on whether or not the Liberty Fund will post bail for any client.

Liberty Fund Locations and Bail Associate Contact Information

Manhattan office
428 Broadway - 6th floor
New York, NY 10013

_____
_____
_____

Brooklyn office
195 Montague Street
Brooklyn, NY 11201

_____
_____
_____

Bronx office
910 Grand Concourse
Bronx, NY 10451

_____
_____
_____

Queens office
118-35 Queens Blvd.
Forest Hills, NY 11375

_____
_____
_____

Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Court

September 2017
Report Summary

Insha Rahman

Statistics show that money bail is unaffordable and out of reach for many New Yorkers. Even though the median bail amount on felony cases in New York City is $5,000, and even lower, at $1,000, on misdemeanor cases, over 7,000 people are detained pretrial at Rikers Island and other New York City jails on any given day because they cannot make bail.

Under New York law, the use of bail doesn't have to be this burdensome. In setting bail, judges have nine forms to choose from, including "alternative" forms such as partially secured or unsecured bonds, that require little to no upfront payment to secure a person's pretrial release. The traditional practice in the courts, however, is to impose only the two most onerous forms of bail: cash bail and insurance company bail bond.

The Vera Institute of Justice launched a three-month experiment in the New York City arraignment courts to examine what would happen if alternative forms of bail were used more often.

- In what kinds of cases might judges be willing to set these forms of bail?
- In what amounts?
- What impact would these alternatives have on a person's ability to make bail?
- What other pretrial outcomes might be expected?

Drawing from a cohort of 99 cases in which an unsecured or partially secured bond was set, these cases were tracked over a nine- to 12-month period to document bail making, court appearance, pretrial re-arrest, and final case disposition. Interviews were conducted with judges, defenders, and court staff to better understand the results and develop recommendations for improving the use of bail in New York City.

The results of the experiment were promising:

- Sixty-eight percent made bail, and an additional 5 percent were released on recognizance.
- The use of alternative forms of bail was not limited to low-level offenses or certain types of offenses—approximately 54 percent of cases had a top charge of a felony, and the cohort spanned the gamut from drug possession, larceny, and robbery, to assault, criminal contempt, and weapons possession.
- Those released had a combined court appearance rate of 88 percent and a rate of pretrial re-arrest for new felony offenses of only 8 percent.
- When released pretrial, the majority of cases resolved in a disposition less serious than the initial top charge at arraignment, with one-third ending in dismissal and another 20 percent ending in a non-criminal conviction.

Ninety-nine cases out of the thousands where bail is set is a miniscule number in the larger scheme of New York City's bail system, yet the experiment illustrates the possibility of meaningful change in the city's criminal courts. The recommendations in this report offer strategies to increase and ease the use of alternative forms of bail:

- educate stakeholders to raise awareness of these forms of bail and how to request and grant them;
- simplify the associated paperwork and procedures to set these forms of bail;
- require judges to routinely set an alternative form of bail as an option in addition to traditional forms of bail; and
- when bail is set, require courts to conduct an individualized inquiry into a person's ability to pay.

For more information

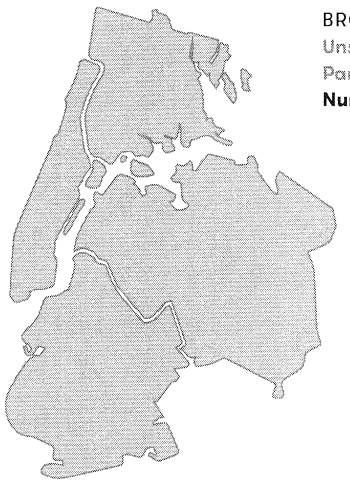
Vera is currently pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America's increasingly diverse communities. For more information, visit www.vera.org, or contact Ram Subramanian, editorial director, at rsubramanian@vera.org.

To read the full report, visit www.vera.org/against-the-odds. For more information about Vera's experimentation with alternative forms of bail in New York City's criminal courts, contact Insha Rahman, project director, at irahman@vera.org.

Vera INSTITUTE OF JUSTICE

233 Broadway, 12th Floor, New York, NY 10279 212 334 1300 vera.org

Alternative forms of bail set by borough



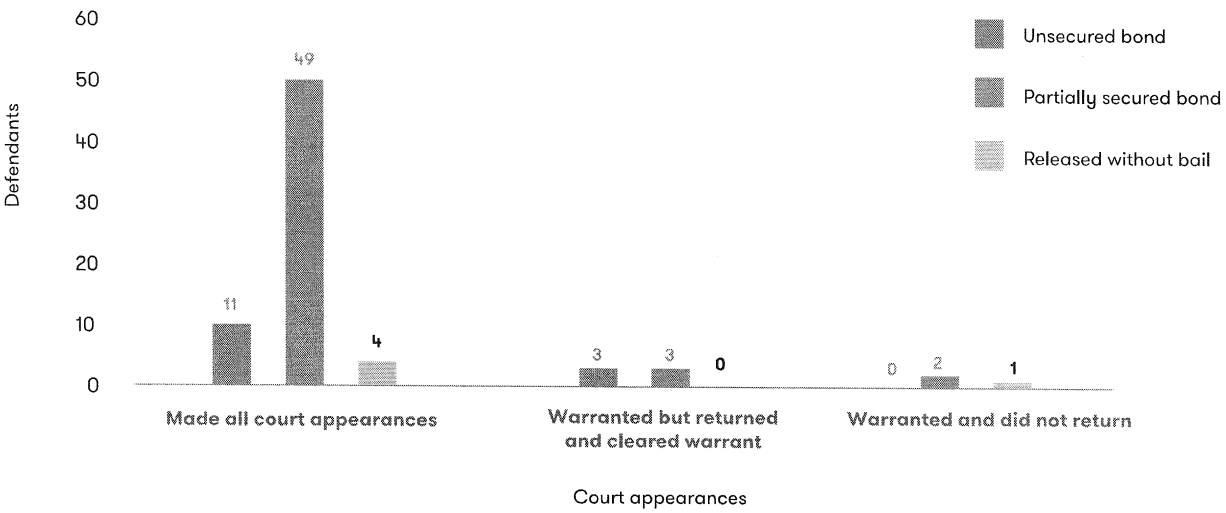
MANHATTAN
Unsecured bonds 0
Partially secured bonds 1
Number of judges 1

BRONX
Unsecured bonds 0
Partially secured bonds 58
Number of judges 4

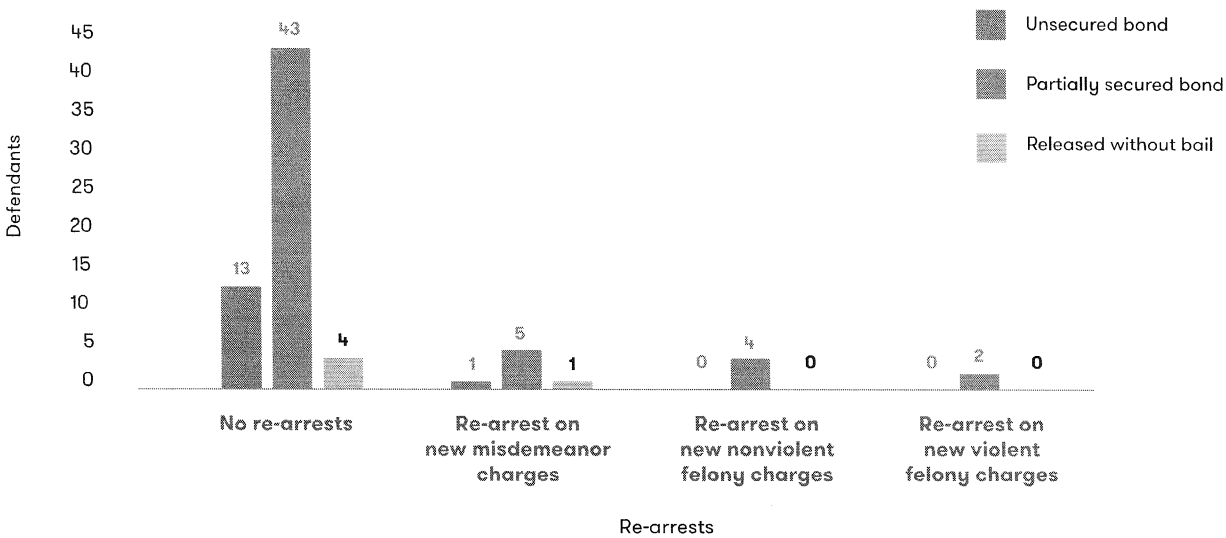
BROOKLYN
Unsecured bonds 11
Partially secured bonds 26
Number of judges 9

QUEENS
Unsecured bonds 3
Partially secured bonds 0
Number of judges 2

Failure to appear at future court dates by type of release

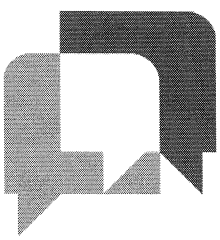


Pretrial re-arrest by type of release



CRIMINAL COURT MEDIATION

Guidelines and Procedures



NEW YORK PEACE INSTITUTE

Mediation is always voluntary, confidential, and driven by the needs of the parties. Overall, mediation is a way for the parties to ease tensions between them and avoid further incidents of harm.

NEW YORK PEACE INSTITUTE

CONTENTS

BROOKLYN MEDIATION CENTER
210 JORALEMON ST., SUITE 618
BROOKLYN, NY 11201

MANHATTAN MEDIATION CENTER
111 JOHN ST., SUITE 600
NEW YORK, NY 10013

WWW.NYPEACEI.ORG
INFO@NYPEACE.ORG

OVERVIEW

Program Description

The Criminal Court Mediation Program is a collaborative project between the Kings County District Attorney's office, Legal Aid Society, Brooklyn Defender Services, and New York Peace Institute. It has been in existence for over 6 years. The program offers complaining witnesses and defendants the opportunity to meet face to face with one another facilitated by a neutral mediator to:

- Discuss the impact of what happened;
- Decide how to make amends and move forward; and
- Determine a recommendation about the criminal charges (Dismissal or ACD).

Mediation is always voluntary, confidential, and driven by the needs of the parties. Overall, mediation is a way for the parties to ease tensions between them and avoid further incidents (lower recidivism).

Mediators meet with each party separately before bringing them together for a joint session (the OOP is modified for mediation), and all meetings take place before the next court date. If the matter is resolved in the joint session, a written mediation agreement is signed by the parties and sent directly to the referring ADA and Defense Attorney to be presented in court to the judge.

New York Peace Institute

New York Peace Institute is a nationally recognized organization in the dispute resolution field that is funded by the NYS Unified Court System and the Mayor's Office of Criminal Justice. Formerly a program of Safe Horizon, New York Peace Institute helps thousands of New Yorkers settle disputes and prevent violence, and often serves as an alternative to court action. The organization receives referrals from various agencies and institutions, such as Civil, Family and Criminal Courts, NYCHA, HRA, the Kings County District Attorney's Office, and the NYC Department of Education.

New York Peace Institute is also a leading trainer in conflict resolution, communication techniques and restorative justice practices. Fee-based training clients have included the New York Police and Fire Departments, New York City Department of Education, United Nations, New York City Department of Housing Preservation and Development, law firms, and dozens of community organizations and schools.

NEW YORK PEACE INSTITUTE

CASES APPROPRIATE FOR MEDIATION

Charges: The most frequent cases referred to mediation are misdemeanors for charges such as, but not limited to:

- Assault
- Aggravated harassment
- Menacing
- Criminal trespassing/mischief
- Vandalism
- Stolen property, burglary
- Violations of Orders of Protection

Relationships: We have found that parties with an ongoing relationship were more likely to proceed through the process, as they have a strong incentive to resolve the issues between them. Typical cases involve:

- Family members (Domestic violence between current/former intimate partners and child abuse are NOT appropriate for mediation).
- Friends
- Neighbors
- Co-workers
- Landlord/tenants.

Indicators for Complaining Witnesses and Defendants

There are several presenting reasons as to why a CW or Defendant may be appropriate for mediation including:

- The CW/D has a lot of questions (i.e., Why did this happen? What were you thinking?)
- The CW/D has a lot to get off their chest.
- The CW/D needs something (i.e., an apology, restitution, acknowledgment or understanding of wrong committed).
- The CW/D wants to have more of a voice in the outcome.
- The CW/D wants "an update" – where is the other party now? What have they thought about since the incident?
- The CW doesn't want the Defendant to have a record and cares about the Defendant's well-being.
- The CW wants the Defendant to get some help (i.e., counseling).
- The CW/D wants a sense of closure by talking with the other party.

BROOKLYN MEDIATION CENTER
210 JORALEMON ST., SUITE 618
BROOKLYN, NY 11201

MANHATTAN MEDIATION CENTER
111 JOHN ST., SUITE 600
NEW YORK, NY 10013

WWW.NYPEACEI.ORG
INFO@NYPEACE.ORG

NEW YORK PEACE INSTITUTE

CONFIDENTIALITY IN MEDIATION

Confidentiality for New York Peace Institute, a Community Dispute Resolution Center, is governed by New York State Judiciary Law Article 21-A, Section 849-b 6, and the Community Dispute Resolution Centers Program Manual, Chapter 5, Section II.A, Child Abuse or Neglect Guidelines.

New York State Judiciary Law Article 21-A, Section 849-b 6 provides that:
"Except as otherwise expressly provided in this article, all memoranda, work products, or case files of a mediator are confidential and not subject to disclosure in any judicial or administrative proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by any participant, mediator, or any other person present at the dispute resolution shall be a confidential communication."

Mediators and Center staff do not maintain any notes about a Criminal Court case during mediation and/or intake, other than for scheduling purposes.

Exceptions to Confidentiality

If an allegation of child abuse or neglect, as defined by law, surfaces during a mediation session (and/or at intake), the Mediation Center shall file a report to the New York State Central Registry.

For more information about the New York Peace confidentiality policy, contact the New York State Unified Court System Office of Alternative Dispute Resolution:

Capital District Office
2500 Pond View, Suite 104
Castleton-on-Hudson, New York 12033
Phone: 518-238-4351 Fax: 518-238-2951

Participants to mediation will be required to read and sign a consent form that outlines the confidentiality policy (see attached "Consent to Mediate Form").

BROOKLYN MEDIATION CENTER
210 JORALEMON ST., SUITE 618
BROOKLYN, NY 11201

MANHATTAN MEDIATION CENTER
111 JOHN ST., SUITE 600
NEW YORK, NY 10013

WWW.NYPEACEI.ORG
INFO@NYPEACE.ORG

NEW YORK PEACE INSTITUTE

REFERRAL AND INTAKE

Referral

New York Peace Institute has developed protocol for accepting mediation referrals and all attempts are made to ensure on-going communication between the Mediation Center and the DA's office.

Our average case takes 35 days from intake to disposition. We generally request adjournments of 6 weeks to ensure the process is completed in between adjournments. If we ever require an extension to complete the process, Mediation Center staff will check in several days before the adjournment.

Once a case has been identified as appropriate for mediation, the following should occur:

- The ADA/DC should contact the CW and other attorney to explain mediation and determine if they are amenable.
- The Order of Protection should be modified to allow for mediation.
- The referring attorney should complete a Referral Form and submit it by email to criminalmediation@nypeace.org (see attached – Referral Form).

Intake

Mediation Center staff will email confirmation to the referring attorney that the Referral Form has been received within 24 hours. Staff will then reach out to the CW and Defense Counsel to make sure that both are amenable to mediation, and will contact the Defendant as well. Client availability will be noted and then the case will be assigned to a Criminal Court mediator to schedule the case.

Mediation Center staff will email notifications to the ADA and Defense Attorney when the joint mediation is scheduled.

BROOKLYN MEDIATION CENTER
210 JORALEMON ST., SUITE 618
BROOKLYN, NY 11201

MANHATTAN MEDIATION CENTER
111 JOHN ST., SUITE 600
NEW YORK, NY 10013

WWW.NYPEACE.ORG
INFO@NYPEACE.ORG

THE MEDIATION PROCESS

Pre-Session

Mediators meet with the CW and Defendant separately in private sessions prior to scheduling mediation. During the pre-session, the parties are informed about the mediation process and possible outcomes, and have an opportunity to become familiar with the mediator and Center staff. The pre-session is also a chance for each party to:

- Talk about what happened in a relaxed and safe setting.
- Ask questions about the mediation process.
- Determine if there are any safety concerns and if so, decide if mediation is still a viable option.
- If there are emotional issues that might make the joint session especially difficult, there can be a discussion about how to prepare for that confrontation and the option of bringing a support person along to mediation.
- Clarify what he/she would like to accomplish in mediation and prepare for the conversation.
- Decide if he/she definitely wants to proceed to mediation.

Joint Mediation Session

During the joint mediation session, the mediator facilitates conversation with both parties regarding the incident and how it impacted them and others, and explores how they want to move forward in their relationship, if at all.

If the matter between them is resolved, the parties talk about the criminal charges and decide what disposition they would like to recommend to the judge.

Role of the Mediator

Throughout the pre-sessions and joint mediation session, the mediator remains neutral and does not pass judgment or make decisions for the parties. The mediator is there to help the parties express their concerns and feelings, clarify the issues, and facilitate a conversation around future behaviors. The mediator also drafts up the mediation agreement, if any.

DISPOSITION

Mediation Agreements

Agreements include a brief statement about the resolution of the underlying matter and a recommendation to the judge regarding the criminal disposition. Options are Dismissal, ACD with or without OOP/LOOP, or Violation. Agreements can also include requests for restitution, counseling or drug counseling. (see attached– Mediation Agreement Sample). Occasionally parties will enter into a side agreement that would not be shared with the court (for example, specifics regarding an ongoing relationship).

Mediation Center staff will inform the mediator if the ADA has placed specific parameters on a case regarding the criminal disposition (Defense Attorney would be consulted in advance). For example, if the ADA would accept an ACD but not a dismissal, this would be communicated to the parties during the pre-sessions. Also, mediators strongly advise parties to check in with the ADA or Defense Attorney before signing a mediation agreement, especially when the outcome is other than an immediate dismissal.

More Time

If either or both parties would like additional time to consider whether to sign an agreement, another mediation session can be scheduled (prior to the next court date). Another session can also be scheduled when there's not enough time to conclude the conversation in one sitting.

No Agreement

Parties can also decide not to agree, in which case, the mediation is concluded.

Communication with the Court

Mediation Center staff will email notification of the case disposition (see attached – Disposition Form) to the ADA, Supervising ADA, and Defense Attorney along with a scanned copy of the signed agreement, if any.

The Disposition Form specifies whether mediation took place, if there was an agreement, if either party declined or didn't appear to mediation, or if we were unable to reach the parties. It also indicates whether the case was deemed inappropriate for mediation (i.e. screened out for domestic violence or child abuse). On the next court date, the court ADA and Defense Attorney should report the mediation disposition and present the agreement, if any, to the judge for consideration.

AFTER MEDIATION

Case Follow-Up

For cases in which there was a mediation or a pre-session, Mediation Center staff will contact the participants within thirty days of the next court date. The purpose of the follow up is to check in to see how the parties are doing and to get feedback about their experience with the mediation process.

The Mediators

New York Peace Institute mediators have extensive training in basic mediation techniques and are carefully evaluated before they are eligible for more advanced programs. Additional training is provided in restorative justice and Criminal Court procedures, and newly trained mediators are paired with experienced ones until they're ready to mediate solo. New York Peace Institute mediators come from varied professional backgrounds – many are attorneys or social workers.

Rikers and Beyond – Additional Resources

Rikers Island

Rikers: An American Jail, a documentary from Bill Moyers, produced by Marc Levin, Mark Benjamin, and Rolake Bamgbose (2016). Trailer, full film, background information, and publicity contact available at: http://rikersfilm.org

A More Just New York City: Report of the Independent Commission on New York City Criminal Justice and Incarceration Reform (April 2, 2017), a/k/a the Lippman Commission Report, Full report available at: https://static1.squarespace.com/static/577d72ee2e69cfa9dd2b7a5e/t/58e0d7c08419c29a7b1f2da8/1491130312339/Independent+Commission+Final+Report.pdf

Jail in New York City: Evidence-Based Opportunities for Reform, by Michael Rempel, Ashmini Kerodal, Joseph Spadafore, and Chris Mai (Center for Court Innovation & Vera Institute of Justice, January 2017). Report (and podcast interview of Michael Rempel) available at: http://www.courtinnovation.org/research/4491/publication

Before the Law, by Jennifer Gonnerman (The New Yorker, October 6, 2014), about Kalief Browder, available at: https://www.newyorker.com/magazine/2014/10/06/before-the-law

Bail

Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts, by Insha Rahman (Vera Institute of Justice, Sept. 2017), available at https://www.vera.org/publications/against-the-odds-bail-reform-new-york-city-criminal-courts

Various reports from the Center for Court Innovation available at http://www.courtinnovation.org/research/4491/publication, including:

Demystifying Risk Assessment: Key Principles and Controversies, by Sarah Picard-Fritsche, Michael Rempel, Jennifer A. Tallon, Julian Adler, and Natalie Reyes (Center for Court Innovation, 2017),

Navigating the Bail Payment System in New York City: Findings and Recommendations, by Elise White, Melissa Labriola, Ashmini Kerodal, Elise Jensen, and Michael Rempel (Center for Court Innovation, 2015), available at http://www.courtinnovation.org/research/4491/publication

Restorative Justice

Restorative Justice Initiative, http://www.restorativejustice.nyc

Can Forgiveness Play a Role in Criminal Justice?, by Paul Tullis (The New York Times Magazine, January 4, 2013), available at: http://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html?_r=0

Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration, by Danielle Sered, Common Justice (New York, Vera Institute of Justice, 2017). Full report available at : https://www.vera.org/publications/accounting-for-violence

How to curb violence, and mass incarceration, by focusing on crime victims, by Danielle Sered, Common Justice; together with video of a panel discussion led by Tom Jackson (The Washington Post, February 16, 2017), available at: https://www.washingtonpost.com/news/true-crime/wp/2017/02/16/how-to-curb-violence-and-mass-incarceration-by-focusing-on-crime-victims/?utm_term=.8c0912c0c6d3

Reentry

Drive Change, http://drivechangenyc.org

John Jay College Prisoner Reentry Institute, Removing Barriers to Higher Education for the justice-involved, http://johnjaypri.org/educational-initiatives/higher-education-policy/

Bard Prison Initiative, http://bpi.bard.edu

Ban the Box Campaign, http://bantheboxcampaign.org

Panel Participants

Kirk Anthony James is a Clinical Assistant Professor at the NYU Silver School of Social Work. He completed his Doctorate in Clinical Social Work (DSW) from the School of Social Policy and Practice at The University of Pennsylvania in May 2013. His dissertation, "The Invisible Epidemic in Social Work Academia," examined the complex phenomena of mass incarceration through a historical and contemporary lens. He concluded by developing curricula for Master level students to increase awareness, activism and holistic practice in the milieu. Courses developed from his dissertation have been implemented at Columbia University, Temple University, City College, and the University of Pennsylvania amongst others.

Dr. James's primary research and publications focus on deconstructing issues of mass incarceration — specifically as it pertains to trauma, cognitive development, culpability, and the examination of systems that foster and perpetuate racial injustice. He also works collaboratively with the Center For Justice at Columbia University on its annual "Beyond The Bars" conference — which brings impacted people together with academics, activists, policy makers, and practitioners from across the country to create a more informed understanding, and subsequent response to mass incarceration.
Dr. James has over a decade of leadership experience in various social justice settings, and is a highly sought out speaker and human rights advocate. He has been a consultant on social justice projects from the Caribbean to Africa. At the University of Pennsylvania, he developed and directed the Goldring Reentry Initiative (GRI). The primary goals of the GRI are to identify best practices in reducing recidivism for individuals transitioning from Philadelphia jails, and to train clinical and macro level social work students to work with incarcerated individuals (pre and post release).

Kirk James also received his MSW from the Hunter College School of Social Work in 2009, his B.A. from Hunter College, CUNY, in 2005, and his A.A. from Canisius College of Buffalo in 2002.

Elizabeth Bender is a Staff Attorney with the Legal Aid Society's Decarceration Project, a unit dedicated to ending mass incarceration and pretrial detention through bail reform and litigation. She litigates adverse bail decisions on behalf of indigent clients in trial and appellate courts and advocate for policies and legislation that will reduce pretrial detention. Before joining the Project, Elizabeth was a trial attorney at Legal Aid's Criminal Defense Practice in the Bronx for five years. She is a member of the New York City Bar Association's Criminal Justice Operations Committee and volunteer with the CLOSErikers campaign.

Elizabeth received her J.D. from Fordham University School of Law in 2011, and her B.A. from the University of Michigan in 2006.

Mika Dashman is an attorney, mediator and a zealous advocate for restorative justice. She is the Founding Director of Restorative Justice Initiative, a Partner Project of the Fund for the City of New York. Restorative Justice Initiative is a citywide, multi-sector advocacy project promoting restorative principles and practices in New York City's neighborhoods, courts and schools. Mika has been awarded the David Lerman Memorial Fund Fellowship in Restorative Justice by the Project for Integrating Law, Spirituality and Politics in both 2015 and 2017.

Mika is a New York State-certified mediator and she has mediated criminal court cases and facilitated community conferences through the New York Peace Institute. Mika also facilitates peacemaking/community-building circles for organizations, student and professional groups.

Prior to beginning her work in alternative dispute resolution, Mika spent more than six years providing direct legal services to indigent individuals at several New York City non-profits, including Housing Works, Inc., where she also worked on all aspects of the agency's civil rights impact docket.

Mika received her J.D. from the City University of New York School of Law in 2005 and her B.A. from Sarah Lawrence College.

Martin F. Horn is Distinguished Lecturer in Corrections at the John Jay College, City University of New York and serves as Executive Director of the New York State Sentencing Commission by appointment of the Chief Judge of the State of New York. Horn is also a Managing Director of KeyPoint Government Solutions, Inc. He was appointed by Mayor Michael Bloomberg to serve as Commissioner of the New York City Department of Probation, effective Jan. 1, 2002. A year later Mayor Bloomberg appointed him to simultaneously serve as Commissioner of the New York City Department of Correction, the City's jail system, and he held both positions simultaneously until July 31, 2009. As Correction Commissioner, Horn rebuilt morale, accountability and integrity following a series of highly publicized scandals. He reduced suicides and cut jail violence in half; several conditions of confinement lawsuits were satisfactorily resolved; he reduced the introduction of drugs into jail by initiating New York's first drug interdiction program including the first wide scale drug testing in the City's jails and he reduced suicides among inmates. Horn created the largest and most ambitious jail reentry program in the nation. He reengineered the intake process to insure all inmates were properly screened for vulnerability, possess the documents needed to work upon release, created transitional job opportunities for persons released from jail, and created systems to identify high frequency jail and shelter users. He worked with the City's housing and homeless services community to address the needs for housing of discharged persons.

As Probation Commissioner Horn implemented evidence-based practices, improving the delivery of treatment for addiction to alcohol and other drugs, employment of offenders, the Department's IT capacity, and streamlining the probation violation process. As a result of his efforts recidivism among adult probationers dropped faster than in any other jurisdiction in New York State. His "Project Zero" effort led to major changes in the City's approach to juvenile delinquents, paving the way for a 70% reduction in the City's placement of juvenile delinquents and a tripling of the number of alleged delinquents diverted following arrest.

From March 1995 until January 2000 Horn served as Pennsylvania's Secretary of Corrections. During his tenure staff and inmate safety and health care improved, suicides were reduced, three long standing consent decrees were dissolved, and classification and information systems were modernized. He created an innovative addiction treatment program that for the first time provided funding for post release treatment of released offenders. Under his leadership, improvements to the provision of mental health services were made including an enlargement of facility based acute care and step-down programs, "rule out" protocols to keep mentally ill inmates out of punitive segregation, and innovative release programs for inmates with mental illness were initiated.

He later served as a member of Governor Tom Ridge's Senior Staff as Secretary of Administration for the state of Pennsylvania where he chaired the state's Tobacco Settlement Investment Board, the Pennsylvania Employees' Benefit Trust Fund, the *ImaginePA* Executive Committee (Enterprise Resource Management), and the JNET Council (Justice Network), and was a board member of the Public School Employees' Retirement System.

Horn earlier served as executive director and chief operating officer for the New York State Division of Parole, and held a variety of responsible positions within the Department of Correctional Services including Superintendent of Hudson Correctional Facility. He was an assistant professor of criminal justice at the State University College in Utica, New York from 1975 to 1977. Horn began his career as a New York State Parole Officer in 1969. He has served as co-chair of the American Bar Association Corrections Committee and has chaired the policy and resolutions committees of both the American Correctional Association and the Association of State Corrections Administrators. He has been a Commissioner of the Commission on Accreditation for Corrections and is a member of the Advisory Board of the New York State Commission on Quality of Care for Persons with Disabilities established by the State's SHU Exclusion Law. Horn has lectured and written extensively about matters of prison security and reform, sentencing, the use of social isolation in prisons, reentry and sentencing. Horn has testified before congressional committees and has been an expert consultant domestically and internationally and has been an expert witness on behalf of both plaintiffs and governmental clients.

Jordyn Lexton is the Founder and CEO of Drive Change, a food truck social enterprise that uses the food truck industry to hire, teach, and empower formerly incarcerated youth. After teaching English on Riker's Island for three years and witnessing the traumatic effects of adult jail on youth, Jordyn came up with the concept of Drive Change in 2012. Jordyn entered the re-entry field to work at esteemed organizations including CASES and the Center for Employment Opportunities, as well as for Governor Cuomo's Work for Success program. Jordyn also spent seven months working as a manger on the Kimchi Taco Truck to learn the food truck business. Jordyn holds a Bachelor's of Arts in English Literature from Wesleyan University and a Master's in Education from Pace University. Jordyn is a 2015 Echoing Green Fellow.

Michael Rempel is research director at the Center for Court Innovation. He is currently principal investigator on a national study of prosecutor-led pretrial diversion programs; a multi-method study of "what works" in school safety; and a risk-informed analysis of decision-making gaps at multiple stages of criminal case processing in New York City. He is also co-principal investigator on *NIJ's Evaluation of Second Chance Act Adult Reentry Courts*. In addition, he is involved in several projects that draw upon a combination of evidence-based practice literatures and original research to develop strategies for reducing the use of jail in New York City and nationwide. Most recently, he served on the staff to the *Independent Commission on New York City Criminal Justice and Incarceration Reform*, focusing on data-driven strategies to reduce the City's jail population roughly in half. Also in recent years, he served as principal investigator on a multisite study of prosecutor-led diversion programs; principal investigator on an evaluation of the U.S. Attorney General's *Defending Childhood Demonstration Program*; and principal investigator on a national study of youth involvement in the sex trade. He has also published extensively on the operations and effects of specialized drug treatment courts and on court responses to intimate partner violence. He frequently writes and presents on the use of evidence-based strategies with criminal offenders generally and on best practices when using science-based risk-needs assessment tools specifically. He has long been interested in bridging the gap between the worlds of research and practice, and frequently advises on research-based technical assistance initiatives.

He received his M.A. in Sociology from the University of Chicago in 1995, and his B.A. from Wesleyan University in 1989.

Panel and Materials curated by **Olivia Sohmer**, co-chair of the Criminal Law Committee of the New York Women's Bar Association. For more information, or to contact the speakers, contact Olivia at sohmero@aya.yale.edu

Olivia is the Court Attorney to the Honorable Laura R. Johnson, who sits in Criminal Court in Kings County (Brooklyn). Her interest in criminal law began at the Yale Law School, where she represented federal prisoners at their parole hearings, and was also the research assistant to the late Professor Daniel J. Freed's seminar profiling and analyzing the sentencing practices of sitting judges. Following a federal clerkship and a couple of years at Willkie Farr & Gallagher, Olivia joined the Manhattan District Attorney's Office, where she served under Robert M. Morgenthau for 20 years, prosecuting career criminals, labor racketeering investigations, child abuse cases, and appeals. She has also worked for Children's Rights, Inc., handling class action impact litigation on behalf of children in foster care.

Olivia has volunteered on behalf of at-risk youth, serving as a Court Appointed Special Advocate for foster children in Family Court; participating in an interdisciplinary effort to bring Collaborative Problem Solving methodology to a High School Campus in East New York; and attending planning meetings of the Crossover Youth Practice Model in the Bronx Family Court, under which youth involved in both child welfare and delinquency proceedings have their cases assigned to a single judge. Olivia is also a member of the Advocacy Council of the Citizens' Committee for Children of New York City.

Olivia has her J.D. from the Yale Law School in 1986, and her B.A. from Queens College, CUNY in 1983.