
MEMORANDUM

TO: New York City Board of Correction

FROM: Elena Weissmann, The Bronx Freedom Fund; Elizabeth Bender, Decarceration Project

DATE: November 13, 2018

RE: Implementation of City Council Legislation

Background

In June 2017, the New York City Council passed a package of 5 bills (“Bail Easement Package”) intended to reduce the Rikers population by helping defendants and their loved ones pay bail and understand the bail system. Though the bills aged into law starting in July 2017, they have not been fully implemented. Three of the laws fall under the purview of the Department of Correction. Without the Department’s adherence to these laws, countless New Yorkers spend needless days and nights in jail, held on bail that could otherwise have been paid if only they or a loved one could access the proper information.

This memo details the data we have collected that demonstrate the Department’s non-compliance with the laws and gives accounts from impacted people who were detained illegally after their bail was posted. Then, it recommends that the Board of Correction require the Department of Correction to furnish certain materials in order to identify the causes of the laws’ non-implementation. We ask that the Board instruct the Department to follow the laws immediately, and institutionalize regular monitoring and reporting to ensure that the Department does not deprive another New Yorker of their right to freedom in violation of these Local Laws.

DOC Routinely Violates the Local Laws

The Bronx Freedom Fund has been monitoring DOC’s compliance with these laws since January 2018, relying on public information and conversations with our clients. We are submitting a report with this memo that summarizes our findings.

These Violations Hurt our Clients and Their Families

DOC’s failure to abide by these laws takes a significant toll on our clients and their families. First, it results in the incarceration of legally innocent people who have already posted bail. Second, it causes their loves ones to miss work, school, and family obligations while they try to post bail or waiting for their friends and family members to be released. Third, it costs New York City’s taxpayers. Estimates put the cost of jailing a person for one day in our City’s jails at \$325. Our clients are routinely held for six hours after bail is posted, many are held for 12, and some are even detained for 24 hours or more after they should have been released. The Department’s failure to accept and process bail in accordance with these regulations is illegal, immoral, and expensive, and several of our clients’ experiences demonstrate the impact of its apparent policy of noncompliance.

Just last month, D was held in on bail. Thankfully, although the police did not provide him an opportunity to copy contact information from his cell phone as required by law, he had his family's contact information memorized so he could call them from the courthouse when bail was set. The following day, his family posted his bail in the early afternoon. D and his family expected him to be released that evening. But when D's lawyer checked the Department's Inmate Lookup Site that evening, he saw that his client was still incarcerated. He was unable to reach anyone on the phone at the facility where D was held after multiple calls. D spent that night in jail, "hoping and praying" that it was just a paperwork error and that any minute a CO would call his name to be processed out. But the night came and went, and the next morning—now approximately 16 hours after bail was posted—D's lawyer called the facility again to figure out why D had not been released. This time, staff confirmed that they had the bail paperwork and that that D was going to be released that morning. The lawyer continued to check the DOC site to monitor D's status, and for six hours there was no change: he was still in jail, in what he called "inhumane" conditions. In that time, a fight broke out in the area where D was being housed. Thankfully he was not harmed. D was ultimately released approximately **27 hours** after bail was posted. At the time, under Local Law 123, the Department was required to release people no more than three hours after posting bail. D spent a day in jail when he should have been free. He missed medical appointments to treat injuries he sustained in a recent car accident. Meanwhile, his family who posted the bail were beside themselves with worry because they did not know where he was, why he had not come home yet, and whether he was safe.

Another client, J, was detained for **32 hours** after his bond was posted. The Department believed that he had a parole warrant, even though he was discharged from parole six months earlier and no such warrant existed. Both the bond agent and the client informed DOC staff that the client was not on parole when his bail was posted, to no avail. He spent over a day in jail when he should have been home with his family. It took J's wife a week to save up the money for his bond, and while J was in jail she could not work because J is the primary caregiver for their child. When J's wife posted the bond she expected him to be home in time to watch the child the next day. When he was not released in a timely way, she could not go to work. The absence resulted in her losing her job. J's wife said that his over-detention "affected our whole family."

The overwhelming majority of our clients were not granted a "bail facilitator" or afforded an opportunity to pay their own bail, as mandated by Local Law 125. One of the most egregious illustrations of this noncompliance is with the issue of \$1 bail. Multiple clients have been referred to our organization for bail posting who had \$1 in their property or in their commissary accounts, and even when they requested the option to self-pay, they were denied. We receive these \$1 bail referrals on a daily basis, and we can only assume that most of these individuals could have bailed themselves out days earlier. Among the few clients who did report speaking with someone who might constitute a "bail facilitator," follow-up conversations have revealed that they really only spoke to Legal Aid paralegals and Bronx Freedom Fund staff.

The Local Laws

Local Law 123: Requiring DOC to efficiently facilitate the processing of bail payments

This law requires DOC to accept cash bail payments "immediately and continuously," release clients within a set time frame (3 hours beginning October 1 2018), and accept bail payment at or within a half-mile of each borough courthouse. Given the documented noncompliance we have consistently

observed over the last year, we recommend the Board require the Department to produce the following:

- ❖ A copy of the notice sent to DOC staff informing them of the new requirement to accept bail “immediately and continuously,” without any “blackout periods,” upon the law’s enactment, January 22 2018, including training materials to comply;
- ❖ A report on staffing structures for bail payment, including time-in and time-out specifications and plans for preventing a gap in coverage in accepting bail payments during shift changes and regular occurrences such as facility alarms;
- ❖ A copy of the notice sent to DOC staff informing them of the new release times requirements as of each new date of implementation (July 22 2017, October 1 2017, January 1 2018, April 1 2018, and October 1 2018) including notice of process changes and training materials;
- ❖ A report on the length of time between bail payment and release times during the covered time period, including aggregate reports and individual facility reports;
- ❖ A report on how the DOC monitors release times, and what response it initiates when a person is not released within the statutory period, including which supervisors are responsible for monitoring and enforcing release times;
- ❖ A report on how DOC provides recourse for defendants who spend unnecessary time in jail despite the presence of an available surety;
- ❖ A report on all DOC payment facilities and their distance from the nearest courthouse;
- ❖ A report on proposed DOC payment facilities and a timeline for their implementation; and,
- ❖ A report on any barriers to implementation and DOC’s plans for overcoming them.

Local Law 124: Permitting the delay of defendants into DOC custody in order to facilitate bail payment

If DOC is alerted by an authorized party that a surety is coming to the courthouse to bail out a defendant, they can maintain a “hold” on that defendant so that they are not transported to jail and can be released straight from arraignments and avoid jailtime altogether. This law changes that “hold” period from two hours to 4-12 hours, when appropriate. The law also includes an annual reporting requirement as of July 1, 2018. Given that we have seen the 2-hour holds consistently violated, much less extended to 4-12 hours, we recommend the Board require the Department to produce the following:

- ❖ A copy of the administrative notice sent to employees informing them of this change, including any and all notices sent to the Criminal Justice Agency, which requests the holds;
- ❖ A report on the lawful capacity of each structural unit where defendants would be held;
- ❖ A report on the extension of staffing hours to permit extended holds to include the end of arraignments;
- ❖ A report on defendants who were not eligible for extended hold periods, including the reason for the denial;
- ❖ A copy of the bus schedule departing from court to jail;
- ❖ A copy of the annual report and an explanation for non-issuance of not issued; and,
- ❖ A report on any barriers to implementation and DOC’s plans for overcoming them.

Local Law 125: Requiring DOC to facilitate the posting of bail or bond

This law requires the Department of Correction to provide every defendant with a specialized employee called a “bail facilitator” within 48 hours of admission to a jail facility. It also requires DOC to inform all defendants about their bail/bond amount, their identifying information required for bail payment, all the options for bail payment (including location and steps to take), and all other relevant information including an option for the defendant to access their property and post their own bail. Defendants are supposed to have continued access to their bail facilitator. We recommend the Board require the Department to furnish the following materials, so that we may understand why there seems to be zero adherence to this law:

- ❖ Hiring plans as of implementation date, including plans to incorporate bail facilitators into ongoing DOC bail payment operations;
- ❖ An update on the hiring and onboarding of bail facilitators in each facility;
- ❖ A report on how and when DOC plans to connect defendants with bail facilitators;
- ❖ A report on how many people DOC facilitators have helped to pay their own bail;
- ❖ A copy of the specific information provided to defendants;
- ❖ Any logistical plans for self-payment, including for \$1 bails; and,
- ❖ A report on any barriers to implementation and DOC’s plans for overcoming them.

Conclusion

These laws were passed after several public hearings, with testimony provided by key stakeholders including the Department of Correction. The Department had ample notice, and to our knowledge has not submitted any explanation for their lack of compliance. If adhered to, this legislative package would significantly reduce the Rikers population by avoiding unnecessary jail stays, and would additionally provide critical information to legally innocent people who are jailed by logistical barriers that can easily be overcome. The information requested in this memo would aid stakeholders tremendously in ensuring that these laws are followed and that all New Yorkers are granted equal access under the law.