



The Council of the City of New York

# An Investigation into the Difficulties with Posting Bail in New York City

March 2019

Oversight and Investigations Unit

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## Introduction<sup>1</sup>

An individual arrested for a crime in New York City may be held for arraignment by the arresting agency and, if so, must be arraigned by a judge within 24 hours of arrest.<sup>2</sup> If the matter is not resolved at arraignment, a judge determines whether to release the individual during the pendency of the case, set bail, or remand to the custody of the New York City Department of Correction (“DOC”) without bail.<sup>3</sup> If bail is set, it is almost universally set in the form of either cash bail or commercial bail bonds,<sup>4</sup> and of these two forms, cash is overwhelmingly more commonly used to pay bail than commercial bonds.<sup>5</sup> In practice, cash bail is paid either to DOC or to the New York State Unified Court System (“UCS”).<sup>6</sup>

Any amount of time a presumptively innocent individual needlessly spends in jail is too much time. Every extra hour that an individual spends detained keeps him or her away from family, work, and community. Therefore, if cash bail is set and an individual is able to—or will be able to—pay the set amount, the process of paying bail should not be an impediment to

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<sup>1</sup> The State legislature and the Governor are currently in discussions on bail reform in New York. See Dan. M. Clark, *Cash Bail Will Remain in Reform Legislation While ‘Dangerousness’ Provision is Out*, N.Y. LAW JOURNAL, Mar. 29, 2019, <https://www.law.com/newyorklawjournal/2019/03/29/cash-bail-will-remain-in-legislation-while-dangerousness-provision-is-out/>. The findings and recommendations in this Report speak both to how difficult it is to pay bail in New York City and the Department of Correction’s overall conduct and efficiency and therefore remain important to consider whether or not Albany reaches an agreement on this issue.

<sup>2</sup> The New York State Court of Appeals has held that this 24 hour limit is legally required. *People ex rel. Maxian on Behalf of Roundtree v. Brown*, 570 N.E.2d 223 (N.Y. 1991). See also Alex Traub, *How Does Bail Work and Why DO People Want to Get Rid of It?*, N.Y. TIMES, Jan. 11, 2019, <https://www.nytimes.com/2019/01/11/nyregion/how-does-bail-work-and-why-do-people-want-to-get-rid-of-it.html>.

<sup>3</sup> N.Y. CRIM. PROC. LAW §§ 530.10–530.80.

<sup>4</sup> Elise White et. al, *Navigating the Bail Payment System in New York City*, CENTER FOR COURT INNOVATION 9 (2015), <http://www.courtinnovation.org/sites/default/files/documents/Bail%20Payment%20in%20NYC.pdf>. See also Mary Phillips, *Making Bail in New York City: Commercial Bonds and Cash Bail*, NEW YORK CITY CRIMINAL JUSTICE AGENCY (2010), <https://www.nycja.org/library.php>. The other forms of bail are credit card bail; an insurance company bail bond; a secured surety bond; a secured appearance bond; a partially secured surety bond; a partially secured appearance bond; and an unsecured appearance bond. N.Y. CRIM. PROC. LAW § 520.10.

<sup>5</sup> Phillips, *supra* note 4.

<sup>6</sup> See N.Y. CRIM. PROC. LAW § 520.15(1). DEP’T OF CORR., *Post Bail*, <https://www1.nyc.gov/site/doc/inmate-info/post-bail.page> (last visited Mar. 14, 2019).

that individual's release. Recognizing that the City's complicated and protracted bail payment process was in practice doing just that, the New York City Council ("the Council") enacted legislation to streamline and expedite several aspects of the cash bail payment process through Local Laws 123,<sup>7</sup> 124,<sup>8</sup> and 125<sup>9</sup> (collectively "the Bail-Easement Laws")<sup>10</sup> of 2017.

Each of the Bail-Easement Laws touches upon an important aspect of the bail payment process in New York City: DOC's acceptance and processing of bail payments and its subsequent release of inmates who have posted bail (Local Law 123),<sup>11</sup> DOC's ability to delay transport of inmates from courthouses to DOC facilities in order to allow inmates time to post bail (Local Law 124),<sup>12</sup> and DOC's mandate to provide inmates with information on how to post bail, and access to individuals who could help them do so (Local Law 125).<sup>13</sup>

This Report is the result of the Council's investigation into DOC's bail payment processes, including its compliance with the Bail-Easement Laws. The Council's Oversight and Investigations Unit ("OIU") finds that almost two years since the passage of the Bail-

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<sup>7</sup> N.Y.C. LOCAL LAW 123 (2017), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=ID|Text|&Search=bail>

<sup>8</sup> N.Y.C. LOCAL LAW 124 (2017), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991020&GUID=AE347DDA-968F-4BF8-B85E-22F1E36FB294&Options=ID|Text|&Search=bail>

<sup>9</sup> N.Y.C. LOCAL LAW 125 (2017), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3023520&GUID=9E435A9D-B4F5-4F63-9440-5E4701459D00&Options=ID|Text|&Search=bail>

<sup>10</sup> N.Y.C. COUNCIL COMMITTEE OF THE JUSTICE DIVISION, COMMITTEE REPORT, OVERSIGHT: WHY DOES THE CITY MAKE IT SO HARD TO PAY BAIL (December 3, 2018), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3714874&GUID=329A67B3-7F0A-41DB-A3D2-EB503F800657&Options=&Search=>

<sup>11</sup> The full text of Local Law 123 is included *infra* in Appendix D. Local Law 123 was enacted as New York City Administrative Code section 9-148.

<sup>12</sup> The full text of Local Law 124 is included *infra* in Appendix D. Local Law 124 was enacted as New York City Administrative Code section 9-149.

<sup>13</sup> The full text of Local Law 125 is included *infra* in Appendix D. Local Law 125 was enacted as New York City Administrative Code section 9-150.

Easement Laws, DOC is still failing to provide individuals with a simple, timely way to pay bail and is substantially out of compliance with many provisions of the Bail-Easement Laws.

## Executive Summary

The Council passed the Bail-Easement Laws in 2017 in response to the inefficient, antiquated, and often dehumanizing nature of the bail payment process in New York City.<sup>14</sup>

In the fall of 2018, the Council expressed concern about DOC's overall bail payment processes and its compliance with the Bail-Easement Laws, focusing on the lack of bail payment windows within half a mile of certain courthouses, the existence of blackout periods during which DOC will not accept bail payments for a person in its custody, the amount of time it takes DOC to release inmates who have paid bail, and DOC's failure to provide inmates both with information about how to pay bail and access to individuals who could help them do so.<sup>15</sup>

The Council ultimately held an oversight hearing on the lingering difficulties with paying bail on December 3, 2018 (the "December 3 Hearing"). The Council was concerned that DOC was not able to provide satisfactory answers to many of the questions posed at the hearing related to post-bail payment release times,<sup>16</sup> the blackout periods in the Bronx,<sup>17</sup> and the existence of Bail Facilitators.<sup>18</sup> Following the hearing, advocates also questioned DOC's ability and willingness to comply with the Bail-Easement Laws in light of the agency's history of non-compliance.

Taken together, these questions and concerns led to OIU's investigation, which took place in January and February of 2019. During that time, OIU analyzed DOC's bail payment processes

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<sup>14</sup> See N.Y.C. COUNCIL COMM. OF THE GOVERNMENTAL AFFAIRS DIVISION & COMM. ON FIRE AND CRIMINAL JUSTICE SERVICES, COMMITTEE REPORT (May 2, 2017), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>15</sup> Letter from N.Y.C. Council to the N.Y.C. Dep't of Corr. (Oct. 10, 2018).

<sup>16</sup> *Hearing Before the N.Y.C. Council Comm. on Justice Sys. & Comm. on Criminal Justice*, 30 (N.Y.C. Dec. 2018) (statement of Chief of Dep't of N.Y.C. Dep't of Corr.), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3714874&GUID=329A67B3-7F0A-41DB-A3D2-EB503F800657&Options=&Search=>

<sup>17</sup> *Id.* at 37.

<sup>18</sup> *Id.* at 22, 41.

and compliance with each element of the Bail-Easement Laws. The results can be summarized as follows:

#### [DOC's Acceptance and Processing of Bail Payments & Subsequent Release of Inmates](#)

Currently, DOC is not accepting cash bail payments “immediately and continuously” after an inmate has been admitted to its custody as required by Local Law 123 of 2017—it has not yet opened bail windows within one half mile of the criminal courthouses in the Bronx or on Staten Island<sup>19</sup>, the online bail option is not widely available and is under-utilized, and blackout periods still exist during which DOC will not accept bail payments, such as during inmate transport from the courthouse to a DOC facility or during the initial processing at a DOC facility. DOC has also failed to provide the public with up-to-date and accurate information on how to post bail, creating yet another obstacle to the bail payment process. Further, DOC is not releasing inmates within three hours after they have paid bail, another requirement of Local Law 123 of 2017.

#### [DOC's Ability to Delay the Transport of Inmates](#)

DOC has failed to provide the public with accurate information and instruction on how to request that an inmate’s transport from the courthouse to a DOC facility following arraignment be delayed in order to facilitate the payment of bail while the inmate is still in the courthouse. Local Law 124 of 2017 authorizes DOC to delay transportation of an eligible inmate for four to twelve hours on either its own initiative or at the request of a non-profit agency contracted with the City (also known as a placing a “hold” on an inmate).<sup>20</sup> Pursuant to Local Law 124 of 2017, DOC is authorized to place a hold once direct contact has been made with a person who reports that he or

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<sup>19</sup> DOC claims that it is currently “outfitting a site in the Bronx” for a bail window and currently “exploring options for a [bail window] site” in Staten Island. E-mail from N.Y.C. Dep’t of Corr. to the N.Y.C. Council (Mar. 29, 2019, 7:27 PM EDT).

<sup>20</sup> N.Y.C ADMIN. CODE § 9-149.



she will post bail for the inmate. OIU observed a single poster explaining how to place a hold at only one DOC facility. While the Mayor’s Office of Criminal Justice (“MOCJ”) authored a 2018 pamphlet with instructions on how to pay bail, OIU did not observe this pamphlet at any of the locations visited. Rather, OIU found prior versions of the pamphlet at only two locations and these versions contained inaccurate information on how to place this hold.<sup>21</sup>

Perhaps owing to this lack of information (accurate or otherwise), OIU found that an individual’s success in placing a hold, in practice, is largely dependent on personal contacts with employees within the courthouse or at DOC. This means that an individual lacking such personal contacts—or lacking an advocate with such personal contacts—is at a significant disadvantage. For example, OIU has found that in at least one borough, DOC will *immediately* transport an individual for whom bail has been set if that individual’s bail is set close in time to the next scheduled bus departure for a DOC facility. Only an individual or an advocate with knowledge of this DOC practice has the ability to comprehend the urgency that time of day may impose on this process and react accordingly.

#### [DOC’s Mandate to Provide Inmates with Information Relevant to Posting Bail and Access to Individual Who Can Help Them Do So](#)

Local Law 125 of 2017 created Bail Facilitators, who are persons tasked with explaining the bail process to eligible inmates and taking reasonable measures to assist with posting bail. DOC must ensure that Bail Facilitators meet with eligible inmates within 48 hours of the admission of such inmates into DOC custody and that such inmates have continued access to

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<sup>21</sup> The versions of this pamphlet present at these two locations were dated 2016 and 2017. Pamphlet, Mayor’s Office of Criminal Justice, How to Pay Bail in New York City (2016); Pamphlet, Mayor’s Office of Criminal Justice, How to Pay Bail in New York City (2017). As explained more fully *infra* pages 39–43, although Local Law 124 was not passed until July 2017, the practice of placing these holds pre-dated its passage.

Bail Facilitators thereafter.<sup>22</sup> DOC purports to have staff members acting as Bail Facilitators,<sup>23</sup> but advocates report that neither they nor their clients have ever interacted with someone in that role. Local Law 125 of 2017 also requires DOC to provide an inmate eligible for bail with written information about how to post bail and to allow the inmate the opportunity to access personal property to do so, all within 24 hours of taking the inmate into custody. Again, while DOC claims to do this,<sup>24</sup> OIU heard contrary information from advocates.

In sum, DOC's policies and practices have created a system in which even an individual who is able to pay bail faces obstacles and challenges at every stage in order to do so.

Based on the findings discussed in this Executive Summary, and other factors discussed more fully below, the Council recommends that:

- DOC open bail payment windows within a half mile of the criminal courthouses in the Bronx and on Staten Island.
- DOC eliminate all fees associated with online bail payment. Those paying online bail should also be presented with the option to input an identifier other than a social security number.
- DOC eliminate blackout periods by accepting bail payments during inmate transport to, and initial processing at, DOC facilities.
- DOC standardize the processes for paying bail at its bail windows. There should be uniform signage posted to identify bail windows, and a uniform method of attracting the attention of bail window attendants, such as a buzzer or a light.
- DOC work with MOCJ and OCA to ensure that all materials available near cashier's and bail windows concerning the bail payment process are accurate, updated, and standardized. These materials should also be made available in languages other than English.

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<sup>22</sup> N.Y.C ADMIN. CODE § 9-150.

<sup>23</sup> E-mail from N.Y.C. Dep't of Corr. to the N.Y.C. Council (Mar. 29, 2019, 7:27 PM EDT).

<sup>24</sup> *Id.*

- DOC work with MOCJ and OCA to ensure that all materials available near cashier's and bail windows concerning the bail payment process contain explicit information on the placement of holds.
- DOC ensure directional signage to bail windows is clear and visible at all DOC facilities.
- DOC ensure all inmates eligible for bail under a certain monetary threshold be interviewed post-arraignment for the purpose of identifying potential sureties and allowing such inmates the opportunity to post bail.
- DOC cease its practice of circumventing an inmate's right under Local Law 124 to a hold by placing the inmate immediately on a bus following arraignment.
- DOC either create and fill the Bail Facilitator position with current DOC employees, or contract with an outside provider to do so. Bail Facilitators should be dedicated employees, and DOC should be required to report on the number and duties of Bail Facilitators to the Council on a periodic basis.
- DOC staff at all levels receive additional training on bail processes and how to better communicate with the public.
- DOC conduct periodic audits of its release times for inmates who have posted bail and report results to the Council.
- DOC modernize its communication systems and upgrade from its current reliance on faxing and hand delivery.
- DOC hold periodic meetings with advocacy groups to facilitate ongoing discussion about the bail payment process.

## Methodology

In furtherance of our investigation into DOC's bail processes and overall compliance with the Bail-Easement Laws, OIU conducted multiple interviews with advocates and other relevant stakeholders (collectively, the "advocates"): the Brooklyn Community Bail Fund, the Bronx Defenders, the Bronx Freedom Fund, the Legal Aid Society's Decarceration Project, the Liberty Fund, the New York County Defender Service, and the New York City Criminal Justice Agency. During these interviews, advocates described their experiences with the bail payment process, including any obstacles that either they or their clients have faced in trying to navigate the system.

### Site Visits

During January and February 2019, OIU visited all the sites at which bail can be paid in New York City at least once, with the exception of the Horizon Juvenile Center.<sup>25</sup> Specifically, OIU visited New York City's five criminal courthouses and the following DOC facilities:

- Brooklyn Detention Complex
- Manhattan Detention Complex
- Queens Detention Complex
- Rikers Island
- Vernon C. Bain Center

At each of these sites, OIU observed general conditions, including, but not limited to, the signage present, informational materials available, cleanliness of facilities, and helpfulness of staff. OIU only visited areas open to the public in order to observe the bail payment process. Prior to any substantive engagement with any DOC or UCS employees, OIU identified themselves as Council employees.<sup>26</sup>

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<sup>25</sup> Horizon Juvenile Center does not accept bail payments for inmates housed at other DOC facilities. Therefore, for purposes of this Report, OIU focused its efforts on DOC facilities other than Horizon Juvenile Center.

<sup>26</sup> Specifically, OIU announced themselves to DOC or court staff at Rikers Island, Brooklyn Detention Complex, Manhattan Detention Complex, Queens Criminal Court, and Kings Criminal Court in order to ask questions based

## Background

### The Landscape Prior to the Bail-Easement Laws

Unnecessary incarceration is costly for the City and for the individual who pays the price in time spent away from family, job, and community. The Bail-Easement Laws were designed to prevent the unnecessary incarceration of individuals who could make bail, but were prohibited from doing so by archaic practices and institutional barriers.<sup>27</sup>

At a May 2, 2017 hearing held in connection with this package of legislation (the “May 2 Hearing”), the Council and those who testified discussed a number of issues that contributed to the difficulties inmates faced in paying bail, including the presence of blackout periods in which DOC would not accept the payment of bail;<sup>28</sup> a lack of DOC bail windows in close proximity to the criminal courts;<sup>29</sup> the inability of DOC to hold inmates at the court house post-arraignment for an extended period of time;<sup>30</sup> excessive wait times to pay bail and to process inmates for release;<sup>31</sup>

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on our observations at those sites. At the other DOC facilities and criminal courthouses, OIU’s interactions with staff were non-substantive and therefore OIU staff did not identify themselves as part of the Council. OIU was accompanied by advocates at the New York County Criminal Court, Bronx Criminal Court, Queens Criminal Court, Vernon C. Bain Center, and Queens Detention Complex, who walked them through the bail payment process and provided additional background and insight based on the advocates’ experiences.

<sup>27</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 3 (N.Y.C. June 2017) (statement of Chairperson of N.Y.C. Council Comm. on Fire and Criminal Justice Servs.), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>28</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 82 (N.Y.C. May 2017) (statement of Executive Director of the Bronx Freedom Fund), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>29</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 27–28 (N.Y.C. May 2017) (statement of Representative of N.Y.C. Dep’t of Corr.), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>30</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 83–86 (N.Y.C. May 2017) (statement of Director of Bond Operations of the Bronx Freedom Fund), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>31</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 82 (N.Y.C. May 2017) (statement of Executive Director of the Bronx Freedom Fund), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

and a general lack of awareness of how to post bail by both detained individuals and their loved ones.<sup>32</sup> As one advocate noted, “The whole system as it exists right now is cumbersome when it works at its best [but is] devastating when it malfunctions.”<sup>33</sup>

A substantial amount of time at the May 2 Hearing was spent discussing DOC’s complicated practices for processing bail payments, as well as its generally outdated technology and communication systems. DOC testified about its reliance on fax machines as its primary method of communication and addressed reports of inmates being held longer than necessary—at times for multiple days—because DOC had not checked its fax machines.<sup>34</sup> DOC further testified that while it “would love to get modernized” and eliminate the use of fax machines, it was unclear what steps DOC’s Information Technology Department intended to take in that regard.<sup>35</sup>

At the May 2 Hearing, MOCJ testified that the Administration was in the process of executing a “range of improvements including directional and informational signage and information stations” throughout the courthouses in addition to “procedural justice training for security officers” to facilitate the bail process.<sup>36</sup>

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<sup>32</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 86 (N.Y.C. May 2017) (statement of Queens Project Manager of the Bronx Freedom Fund), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>33</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 83–86 (N.Y.C. May 2017) (statement of Director of Bond Operations of the Bronx Freedom Fund), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>34</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 28–31 (N.Y.C. May 2017) (statement of Representative of N.Y.C. Dep’t of Corr.), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>35</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 31, 45 (N.Y.C. May 2017) (statement of Deputy Comm’r of N.Y.C. Dep’t of Corr.), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>36</sup> *Hearing Before the N.Y.C. Council Comm. on Fire and Criminal Justice Servs.*, 25 (N.Y.C. May 2017) (statement of General Counsel of the Mayor’s Office of Criminal Justice), *available at*

## The Bail-Easement Laws

On June 21, 2017, the Council passed Local Laws 123, 124, and 125 of 2017. A summary of each of these laws follows.

### Local Law 123 of 2017

- DOC must accept cash bail payments “immediately and continuously” after an inmate is admitted to the custody of DOC, except on the dates in which the inmate appears in court other than for an arraignment.<sup>37</sup>
- Subject to certain exceptions, DOC must release any inmate for whom bail or bond has been paid or posted within the required time period of either the later of such payment being made or the department’s receipt of notice that payment was made.<sup>38</sup> The required time period for purposes of this law meant five hours beginning on October 1, 2017, four hours beginning on April 1, 2018 and three hours beginning on October 1, 2018.<sup>39</sup>
- DOC must accept or facilitate the acceptance of cash bail payments for any inmate in DOC custody (i) at any criminal courthouse; (ii) at any location within one half mile of any courthouse during all operating hours of such courthouse and at least two hours subsequent to such courthouse’s closing; or (iii) online.<sup>40</sup>

### Local Law 124 of 2017

- Subject to certain exceptions, to facilitate the posting of bail, DOC may delay the transportation of an inmate for admission to a housing facility for not less than four and not more than twelve hours following the inmate’s arraignment if requested by either DOC or a not-for-profit corporation under contract with the City to provide pretrial justice services, when such parties have made direct contact with a person who reports that he or she will post bail for the inmate.<sup>41</sup>

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<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>

<sup>37</sup> See N.Y.C ADMIN. CODE § 9-148(a).

<sup>38</sup> The timeframe for releasing inmates may be extended where (1) the inmate receives discharge planning services prior to release; (2) the inmate has a warrant or hold from another jurisdiction or agency; (3) the inmate is being transported at the time bail or bond is paid or posted; (4) the inmate is not in departmental custody at the time bail or bond is paid or posted; (5) the inmate requires immediate medical or mental health treatment; or (6) Section 520.30 of the criminal Procedure Law necessitates a delay. N.Y.C ADMIN. CODE § 9-148(b).

<sup>39</sup> N.Y.C ADMIN. CODE § 9-148(d).

<sup>40</sup> N.Y.C ADMIN. CODE § 9-148(c).

<sup>41</sup> N.Y.C ADMIN. CODE § 9-148(a). Delay is not permissible for an inmate who (1) appears or claims to have a health or mental health condition that requires attention during the time period of such delay; (2) appears to be physically incapacitated due to drug or alcohol intoxication; (3) requests medical attention or appears to require immediate medical attention; (4) has bail set in an amount of 10,000 dollars or more; or (5) states, upon being informed of the permissible delay, that he or she will not be able to post bail within 12 hours or otherwise indicates that he or she does not wish to be subject to such delay. N.Y.C ADMIN. CODE § 9-148(b).

- The law also requires DOC to demonstrate its compliance with the law through annual reports.<sup>42</sup>

### Local Law 125 of 2017

- Within 24 hours of taking custody of an inmate eligible for bail or bond, DOC shall provide to the inmate in written form: (i) the inmate's amount of bail or bond; (ii) the inmate's New York State identification number or booking and case number or other unique identifying number;<sup>43</sup> (iii) options for all forms of bail payment and all steps required for such payment, including the locations at which a surety may post bail and the requirements for so posting; and (iv) any other information relevant to assisting the inmate in posting bail or bond.<sup>44</sup>
- Within 24 hours of taking custody of an inmate eligible for bail or bond, DOC must notify such inmates that they may post their own bail and allow them the opportunity to access their personal property to facilitate this.<sup>45</sup>
- DOC must ensure that bail facilitators meet with all inmates eligible for bail or bond within 48 hours of their admission to DOC custody; that eligible inmates have continued access to bail facilitators; and that bail facilitators are provided with reasonable resources to fulfill their duties. Bail facilitators must explain to eligible inmates how to post bail or bond and take reasonable measures to assist them with posting bail or bond, including communicating directly with sureties.

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<sup>42</sup> N.Y.C ADMIN. CODE § 9-148(d).

<sup>43</sup> A New York State identification number ("NYSID") number is an identifying number assigned to an individual by the New York State Division of Criminal Justice Services that remains with the individual for his or her lifetime. Directive #4007, New York State Corr. & Cmty. Supervision (Aug. 18, 2016), <http://www.doccs.ny.gov/Directives/4007.pdf>. A booking and case number is an identifying number assigned by DOC to an inmate housed at a DOC jail. Inmate Handbook, Dep't of Corr. 2 (Revised Dec. 2007), [https://www1.nyc.gov/assets/doc/downloads/pdf/inmate\\_hand\\_book\\_english.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/inmate_hand_book_english.pdf).

<sup>44</sup> N.Y.C ADMIN. CODE § 9-150(a).

<sup>45</sup> N.Y.C ADMIN. CODE § 9-150(b).



## Inquiries into Compliance with the Bail-Easement Laws

### October 2018 Correspondence with DOC and December 2018 Oversight Hearing

Many months after the Bail-Easement Laws went into effect, the Council informed DOC by letter that the Council had become increasingly concerned that DOC was ignoring its obligations under the Bail-Easement Laws and planned to hold a public hearing on the issue. Specifically, the Council had been informed that DOC was not in compliance with Local Law 123 of 2017 because bail payment windows were not open within half a mile of certain courthouses, blackout periods still existed during which DOC would not accept bail payments, and it was taking DOC longer than permissible to release inmates who had paid bail. The Council also learned that DOC had violated Local Law 125 of 2017 by not providing defendants with access to Bail Facilitators, information about bail payment, and information on how to self-pay bail.<sup>46</sup> DOC responded by letter and asserted it was in substantial compliance with the Bail-Easement Laws, but admitted that blackout periods still existed in the Bronx and that DOC had not yet assigned specific individuals dedicated only to the duties of Bail Facilitators.<sup>47</sup>

On December 3, 2018, the Council's Committee on Criminal Justice and Committee on the Justice System held a joint oversight hearing on DOC's compliance with the Bail-Easement Laws, where representatives from DOC, MOCJ, and other stakeholders testified. DOC again represented that it was in substantial compliance with the Bail-Easement Laws but acknowledged the existence of blackout periods in the Bronx, and the lack of Bail Facilitators.<sup>48</sup>

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<sup>46</sup> Letter from N.Y.C. Council to the N.Y.C. Dep't of Corr. (Oct. 10, 2018).

<sup>47</sup> Letter from N.Y.C. Dep't of Corr. to the N.Y.C. Council (Oct. 26, 2018).

<sup>48</sup> *Hearing Before the N.Y.C. Council Comm. on Justice Sys. & Comm. on Criminal Justice*, 35–41 (N.Y.C. Dec. 2018) (statement of Chief of Dep't of N.Y.C. Dep't of Corr.), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3714874&GUID=329A67B3-7F0A-41DB-A3D2-EB503F800657&Options=&Search=>. See also Letter from N.Y.C. Dep't of Corr. to the N.Y.C. Council (Oct. 26, 2018).

### Post-Hearing Follow-Up & Initiation of OIU's Investigation

The December 3 Hearing did little to allay the Council's concerns about DOC's lack of compliance with the Bail-Easement Laws and prompted the Council to reach out by e-mail to DOC with follow-up questions on areas including average post-bail payment release times, the information provided to inmates on how to pay bail, the existence of blackout periods in the Bronx, and the procedures for allowing inmates to access personal property to pay bail.<sup>49</sup> Advocacy groups also reached out to the Council to express their concerns about DOC's history of non-compliance with the Bail-Easement Laws.<sup>50</sup>

In January 2019, the Council launched an investigation into DOC's compliance with the Bail-Easement Laws.

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<sup>49</sup> E-mail from N.Y.C. Council to the N.Y.C. Dep't of Corr. (Dec. 27, 2018, 05:33 PM EST). As of late March 2019, DOC had either not answered or only provided partial information in response to a number of the Council's questions. E-mail from N.Y.C. Dep't of Corr. to the N.Y.C. Council (Mar. 27, 2019, 10:46 AM EST).

<sup>50</sup> Letter from Advocacy Groups to Ritchie J. Torres, Chairperson of the N.Y.C. Council Oversight and Investigations Comm. (Dec. 13, 2018).

## Overview of Bail in New York City

Bail is a monetary deposit that is designed to ensure a defendant's appearance in court during the pendency of a criminal case.<sup>51</sup> In New York State, there are nine authorized forms of bail.<sup>52</sup> This investigation focused on two such forms of bail, cash bail and credit card bail.<sup>53</sup>

Bail must be paid in full for an individual to be released from custody, and those who wish to pay bail on a defendant's behalf are known as "sureties."<sup>54</sup> If a defendant makes all court appearances, the money paid for bail will be returned to the surety by the New York City Department of Finance ("DOF"); if the defendant does not appear, the money will be forfeited.<sup>55</sup>

There are a number of parties that can assist defendants and/or sureties in the process of posting bail. The New York City Criminal Justice Agency ("CJA"), for example, is a non-profit entity that contracts with the City to operate, among other things, a Bail Expediting ("BEX") Program in all boroughs except Staten Island.<sup>56</sup> Under the BEX Program, CJA conducts post-arraignment interviews with defendants who have had bail set at \$5,000 or less in order to assist with identification of potential sureties. CJA then contacts anyone identified and works with them

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<sup>51</sup> See e.g., *Stack v. Boyle*, 342 U.S. 1, 5 (1951) ("the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused."); N.Y. CRIM. PROC. LAW § 510.10.

<sup>52</sup> N.Y. CRIM. PROC. LAW § 520.10. For the nine forms of bail, see *supra* note 4.

<sup>53</sup> The Criminal Procedure Law references the payment of bail by "credit or similar device," and DOC's website states that online bail can be paid by credit or debit card. N.Y. CRIM. PROC. LAW § 520.10; DEP'T OF CORR., *Post Bail*, <https://www1.nyc.gov/site/doc/inmate-info/post-bail.page> (last visited Mar. 14, 2019). For purposes of simplicity, this Report will use the term "credit card" to collectively refer to both credit and debit cards.

<sup>54</sup> N.Y. CRIM. PROC. LAW §§ 520.10–520.40. See also DEP'T OF CORR., *supra* note 6.

<sup>55</sup> N.Y. CRIM. PROC. LAW § 540.10. As a practical matter, the DOF will generally refund bail eight weeks after a case has been resolved. See DEP'T OF CORR., *supra* note 6.

<sup>56</sup> In addition to operating the BEX Program, CJA also "conducts a pre-arraignment interview and makes a release recommendation assessing defendants' likelihood of returning to court; notifies released defendants of upcoming court dates to reduce the rate of non-appearance; operates Supervised Release programs to serve eligible defendants who would otherwise be held in jail; assists Alternatives-to-Incarceration programs in screening defendants for a range of non-custodial sentencing sanctions; and provides information and research services to criminal justice policy makers, City officials, and the public." NEW YORK CITY CRIMINAL JUSTICE AGENCY, <https://www.nycja.org/> (last visited Mar. 14, 2019).

to facilitate the payment of bail.<sup>57</sup> Charitable bail organizations such as the Brooklyn Community Bail Fund, the Bronx Freedom Fund and the Liberty Fund<sup>58</sup> also assist defendants with the payment of bail. These bail organizations operate under the New York Charitable Bail Act, which permits them to pay bail in the amounts of \$2,000 or less for individuals charged with misdemeanors.<sup>59</sup> Defense counsel may also assist their clients and potential sureties in navigating the bail process.

Once bail is set by a judge, it can be paid in-person at a criminal courthouse while a defendant is still present at that courthouse; in-person at a DOC correctional facility while the defendant is housed at a DOC facility; or online if set in the form of credit card bail.<sup>60</sup> Defendants may also self-pay bail using money that has been transferred to their DOC commissary account using JPay or Western Union.<sup>61</sup> A defendant may not be released upon payment of bail if it is discovered that there are warrants, holds, or additional cases involving the defendant that have not been resolved.<sup>62</sup>

### [How to Post Bail: In-Person at a Criminal Courthouse](#)

As noted above, bail can be paid in-person at a criminal courthouse while a defendant is present at that courthouse, which is typically during the period of time after arraignment.<sup>63</sup> Bail

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<sup>57</sup> Annual Report, New York City Justice Agency, 42 (2016), <https://www.nycja.org/library.php#>

<sup>58</sup> The Liberty Fund is a charitable bail fund that was founded in partnership with the Council. THE LIBERTY FUND, <https://www.libertyfund.nyc/about/> (last visited Mar. 14, 2019).

<sup>59</sup> N.Y. INSURANCE LAW § 6805.

<sup>60</sup> See N.Y. CRIM. PROC. LAW § 520.15. See also DEP'T OF CORR., *supra* note 6.

<sup>61</sup> Pamphlet, Mayor's Office of Criminal Justice, How to Pay Bail in New York City (2018). JPay provides a "fast and secure way of sending money" to friends and family of incarcerated individuals. JPAY, INC., <https://www.jpay.com/AboutUs.aspx> (last visited Mar. 14, 2019).

<sup>62</sup> N.Y.C. ADMIN. CODE § 9-148(b).

<sup>63</sup> Pamphlet, Mayor's Office of Criminal Justice, *supra* note 61.

can only be paid at the cashier's window at the courthouse in cash or, if authorized by the arraignment judge, by credit card.<sup>64</sup>

After arraignment, a defendant is transferred to DOC custody but remains at the courthouse until they can be transported to a DOC housing facility.

Local Law 124 allows DOC to delay a defendant's transportation for four to twelve hours following arraignment if requested by DOC or a non-profit contracted with the City to facilitate the payment of bail. Prior to making this hold request, DOC, or a non-profit contracted with the City, must make direct contact with a person who indicates readiness and willingness to post bail for the defendant.<sup>65</sup> Once a hold has been placed on a defendant, DOC should hold the defendant at the courthouse for the requested period.

Therefore, if bail is paid while the defendant is held at the courthouse, the defendant will be released directly from the courthouse. But, if bail is not paid by the time the hold expires, the defendant will be transported to a DOC facility.

#### [How to Post Bail: In-Person at a DOC Facility](#)

If a defendant has been transported to a DOC facility and credit card bail is not an option, bail can only be paid at a DOC facility.<sup>66</sup> Regardless of the facility in which a defendant (hereinafter, also referred to as an "inmate") is housed, bail can be paid in-person 24 hours a day, seven days a week at any of the following DOC facilities:<sup>67</sup>

- Brooklyn Detention Complex
- Manhattan Detention Complex
- Queens Detention Complex

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<sup>64</sup> *Id.*

<sup>65</sup> N.Y.C. ADMIN. CODE § 9-149(a).

<sup>66</sup> Pamphlet, Mayor's Office of Criminal Justice, *supra* note 61.

<sup>67</sup> See DEP'T OF CORR., *supra* note 6.

- Rikers Island
- Vernon C. Bain Center<sup>68</sup>

To pay bail, the surety must travel to one of the above DOC facilities and locate the bail window. Bail windows are open to the public, usually located near the property retrieval window, and staffed by attendants who sit behind glass. The surety should be provided a Surety Information Form (“surety form” or “form”) to complete (*see* Figure 1). Once the surety has completed the form, the surety must deliver it to the bail window attendant, who will then submit the form for processing.<sup>69</sup> While it is not necessary for the surety to pay bail for an inmate at the same DOC facility where the inmate is housed, there are certain advantages to paying at the same facility. OIU learned that if bail is paid at a DOC facility in which the inmate is not housed (*e.g.*, the inmate is housed at Rikers Island but bail is being paid at the Manhattan Detention Complex), the processing time for surety forms can increase by hours, as the form needs to be faxed to the location where the inmate is housed and then potentially hand delivered to the correct person at that facility.

Once the correct person at DOC receives the surety form, that person should authorize bail payment and return the form back to the bail window where the surety intends to pay bail, either by hand delivery or fax, depending on the location.<sup>70</sup> At that point, the surety is allowed to pay bail. The surety must present personal identification and provide the NYSID or booking and case number of the person to be bailed.<sup>71</sup>


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<sup>68</sup> Bail can also be paid at Horizon Juvenile Center for inmates housed at that facility. Horizon Juvenile Center does not accept bail payments for inmates housed at other DOC facilities. Therefore, for purposes of this Report, OIU focused its efforts on DOC facilities other than Horizon Juvenile Center.

<sup>69</sup> Report from N.Y.C. Bd. of Corr., *Reforms and Remaining Challenges with Bail Processing in New York*, 3 (Nov. 13, 2018).

<sup>70</sup> *Id.*

<sup>71</sup> *See* DEP’T OF CORR., *supra* note 6.

	<b>CITY OF NEW YORK DEPARTMENT OF CORRECTION</b> Surety Information Form	Form: #1502E Rev.: 05/23/11 Ref.: Dir. 1502R-A
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Place Inmate ID  
photo here and  
photocopy form.

**Section 1**  
**SURETY PEDIGREE** (To be completed by Surety)

<b>Surety First Name</b> <input type="text"/>	<b>Surety Home Phone</b> <input type="text"/>
<b>Surety Last Name</b> <input type="text"/>	<b>Surety Business Phone</b> <input type="text"/>
<b>Surety Street Address</b> <input type="text"/>	<b>Occupation</b> <input type="text"/>
<b>Surety City, State &amp; Zipcode</b> <input type="text"/>	<b>Relationship to Inmate</b> <input type="text"/>

**Section 2**  
**INMATE INFORMATION** (To be completed by facility staff)

<b>Inmate First Name</b> <input type="text"/>	<b>Book and Case Number</b> <input type="text"/>
<b>Inmate Last Name</b> <input type="text"/>	<b>Docket/Indictment Number</b> <input type="text"/>
<b>Inmate's Home Street Address</b> <input type="text"/>	<b>Inmate Home Phone</b> <input type="text"/>
<b>Inmate's City, State &amp; Zipcode</b> <input type="text"/>	<b>Date of Birth</b> <input type="text"/>
<b>Charge / Judge</b> <input type="text"/>	<b>Race</b> <input type="text"/>
<b>Bail Amount</b> \$ <input type="text"/>	<b>Hair Color</b> <input type="text"/>
<b>Bail Amount (in words)</b> <input type="text"/>	<b>Eye Color</b> <input type="text"/>
	<b>Height</b> <input type="text"/>
	<b>Weight</b> <input type="text"/>

Is the photograph that has been shown to you (copy above) that of the inmate you wish to post bail for?  
 Yes ☐ No ☐

<b>Surety Signature</b>	<b>Date</b>
<b>Facility Witness Signature</b>	<b>Date</b>

**Instructions:**

1. Obtain inmate ID photo and photocopy this form with ID in box in upper right corner.
2. Have surety complete and sign photocopy of the form.
3. After processing the bail, make a copy of the form. File one copy and attach the other to Copy 3 of the bail receipt.

*Figure 1. Surety Information Form obtained at Brooklyn Detention Complex*

Bail is only accepted at DOC facilities in the following forms: (1) U.S. cash for the full amount; (2) cashier's/teller's check in any amount not exceeding the bail figure; (3) money order up to \$1,000 from Federal Express, U.S. Postal Service, Travelers Express Company, Western Union, or a private bank (while the amount of each money order may not exceed \$1,000, payment can be made with multiple money orders or a combination of money orders, cashier's/teller's checks, and cash) or; (4) credit card (if authorized by a judge). Payment in the form of cashier's

check, teller's check, or money order should be made payable to the "New York City Department of Correction."<sup>72</sup>

Once payment has been made in one of the acceptable forms to the bail window attendant, the information should be recorded and processed by DOC and a receipt<sup>73</sup> should be provided to the surety.<sup>74</sup>

In the instance where a surety pays bail at a DOC facility where the inmate is not housed, or at a DOC facility with multiple housing centers (*e.g.*, Rikers Island), DOC faxes receipt of payment to the location where the inmate is housed. Although Local Law 123 of 2017 mandates release within three hours of payment, or the department's receipt of notice thereof,<sup>75</sup> the DOC facility where the inmate is housed may not receive notice at the time bail is paid due to the time consumed by the faxing process.

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<sup>72</sup> *Id.*

<sup>73</sup> As further illustration of the cumbersome nature of the process, five paper receipts are generated upon the payment of bail at a DOC facility. These receipts are disbursed as follows: one copy is given to the person paying bail; one copy is retained as a permanent record in what is known as the Bail Receipt Book; and three copies are placed in the Bail Receipt Envelope with the bail payment for forwarding to DOF. *See* N.Y.C. Bd. of Corr., *supra* note 69.

<sup>74</sup> *See* DEP'T OF FINANCE, *Bail Refunds*, <https://www1.nyc.gov/nyc-resources/service/11117/bail-refunds> (last visited Mar. 14, 2019).

<sup>75</sup> N.Y.C. ADMIN. CODE § 9-148(b).



### How to Post Bail: Online

Post-arraignment, bail can be paid online (from any computer, phone or tablet)<sup>76</sup> if the following circumstances are met:

- Credit card bail as a form of bail payment has been authorized by a judge.
- No surety conditions have been set by a judge; and
- DOC has logged an individual's bail conditions into their Inmate Lookup Service.<sup>77</sup>

However, on any court dates following arraignment, bail must be paid directly at the courthouse cashier's window and cannot be paid online or at a DOC facility.<sup>78</sup>

A surety who wishes to pay bail online may use DOC's online Inmate Lookup Service to locate the inmate in question. The online payment system can be used to pay bail in any amount using a credit card. A non-refundable fee of two percent is charged per transaction. The individual paying bail must enter his or her name, address, phone, e-mail, occupation, and relationship to the person in custody, as well as the last four digits of his or her Social Security Number and the billing address and payment information for the credit card (*see* Figure 2). Multiple credit cards may be used to pay the full bail amount. Multiple people can also pay portions of the same bail amount. If paid in multiple transactions, the full bail amount must be paid within 24 hours of the first transaction. Each separate transaction incurs the non-refundable fee. Once payment is submitted, an e-mail is sent confirming whether the payment has been approved or denied and whether the inmate has been cleared for discharge from DOC custody.<sup>79</sup>


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<sup>76</sup> Online bail may be paid while the individual is still in the courthouse after arraignment, in transit, or housed at a DOC facility, though there may be a short waiting period after arraignment before the individual's information is logged into DOC's system. DEP'T OF CORR., *supra* note 6.


<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

	One Time Payment	Payment Information
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**Enter Payment Information**

**Enter Surety Information**


Please be advised all of surety's personal identification information will need to be verified before proceeding with payment. If any of the provided personal identification information cannot be verified, your request will be denied and your payment will not be processed. For questions, please call Department of Correction (718) 546-1500 during business hours.

First Name 
 Middle Initial(Optional) 
 Last Name

Address

City 
 State 
 ZIP Code

Daytime Phone 
 Cell Phone 
 Work Phone

Email  
 Re-Enter email

Last 4 digits of SSN 
 Occupation 
 Relationship to Inmate

Figure 2. Screenshot of Posting Bail Online through the Inmate Lookup Service

### How to Post Bail: Self-Pay

A surety can also electronically transfer funds to the inmate's DOC commissary account using JPay or Western Union, and those funds can then be used to pay bail. This option is available to all inmates who are bail eligible, regardless of whether a judge has set credit card bail. Once the money arrives, the inmate can ask a DOC official for Form #1502G ("Request for Self Bail") and self-pay bail.<sup>80</sup>

DOC purports to have operational self-pay bail kiosks in courthouse admission areas and DOC facilities to allow inmates for whom credit card bail has been granted to self-pay bail with their own credit cards.<sup>81</sup> According to MOCJ, the Bail Facilitators mandated by Local Law 125 of 2017 are supposed to help inmates at DOC facilities access their credit cards so that they can then use these self-pay kiosks.<sup>82</sup>

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<sup>80</sup> Pamphlet, Mayor's Office of Criminal Justice, *supra* note 61.

<sup>81</sup> E-mail from N.Y.C. Dep't of Corr. to the N.Y.C. Council (Mar. 29, 2019, 7:27 PM EDT).

<sup>82</sup> *Hearing Before the N.Y.C. Council Comm. on Justice Sys. & Comm. on Criminal Justice*, 65–66 (N.Y.C. Dec. 2018) (statement of Deputy Dir. of Crime Strategies of the Mayor's Office of Criminal Justice), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3714874&GUID=329A67B3-7F0A-41DB-A3D2-EB503F800657&Options=&Search=>

## Findings

OIU's investigation has found significant issues with DOC's bail payment processes generally and that DOC is in substantial non-compliance with specific provisions of the Bail-Easement Laws.

### Issues with Paying Cash Bail In-Person

#### *1. No Bail Windows Exist Within One Half Mile of the Courthouses in the Bronx and Staten Island*

Local Law 123 mandates that bail be accepted at “at any location within one half mile of any [criminal] courthouse.” At the time this law was passed, DOC was already in compliance in Manhattan (because the Manhattan Detention Center is located within one half mile of the New York County Criminal Court) and in Brooklyn (because the Brooklyn Detention Complex is located within one half mile of the Kings County Criminal Court). Approximately nine months after all subdivisions of Local Law 123 went into effect, DOC opened a bail window at the Queens Detention Complex, which is located within one half mile of the Queens County Criminal Court.

As of this writing, there are no DOC bail windows located within one half mile of the courthouses in the Bronx and on Staten Island. Rather, the closest bail window to the courthouse on Staten Island is located at the Brooklyn Detention Complex, which is over twelve miles away. The closest bail window to the courthouse in the Bronx is at the Vernon C. Bain Center, which is approximately four miles away (*see* Table 1).

Notwithstanding the lack of bail windows in the Bronx and on Staten Island, DOC has maintained that it is in compliance with Local Law 123 due to the availability of online bail.<sup>83</sup> OIU takes issue with this contention, as more fully discussed *infra* pages 35-37.

<b>Criminal Courthouse</b>	<b>Closest DOC Bail Window</b>	<b>Distance (miles)</b>	<b>In Compliance with Local Law 123</b>
Bronx Criminal Court	Vernon C. Bain Center	3.7	x
Kings County Criminal Court	Brooklyn Detention Complex	0.2	✓
New York County Criminal Court	Manhattan Detention Complex	0.07	✓
Queens Criminal Court	Queens Detention Complex	0.02	✓
Staten Island Criminal Court	Brooklyn Detention Complex	12.3	x

*Table 1. Proximity of Courthouses to Closest DOC Bail Windows*

2. *Information and Materials Present at Bail Payment Locations are Outdated, Misleading and Not Consistently Available*

In order for potential sureties to have the opportunity to pay bail “immediately and continuously,” they must be informed how to do so. OIU found a lack of standardization in the informational materials provided at DOC bail windows—some windows have different posters that appear to be facility-specific, some have pamphlets, and some lack any material at all (*see* Table 2). For instance, a poster discussing “DOC Revised Bail Procedures” that explained, among other things, the procedure for placing a hold while still in a courthouse, was only observed at the Queens Detention Complex, a DOC facility (*see* Figure 7). While OIU is aware that the City has recently created a poster discussing in detail how family members may pay bail called “Need to Pay Bail” (*see* Appendix A),<sup>84</sup> OIU staff did not observe this poster at any DOC facility. In

<sup>83</sup> Letter from N.Y.C. Dep’t of Corr. to the N.Y.C. Council (Oct. 26, 2018) (“DOC launched its online bail system in April 2018, fulfilling the requirement of this law”).

<sup>84</sup> All 2018 informational materials on bail were obtained by the New York City Council Committee on Criminal Justice through e-mail correspondence with the New York City Department of Correction on December 7, 2018. *See* Appendix A–C for these 2018 informational materials.

addition, all of the materials observed at each location were only available in English, despite the fact that many inmates and potential sureties may need to communicate in other languages.

Notably, some of the materials that OIU observed at DOC bail windows were outdated and contained incorrect information. For example, OIU did not observe the official 2018 MOCJ pamphlet, “How to Pay Bail in New York City” (*see* Appendix B) to be present at any facility. Rather, at Rikers Island OIU found a version of the MOCJ pamphlet that was published in 2016 and contained inaccurate information. Specifically, this outdated pamphlet incorrectly stated, “Checks and money orders must be made out to the facility where you are paying bail” (*see* Figure 3). This is inaccurate—checks must be made payable to “New York City Department of Correction.” This instruction is a vestige of the time when sureties could only pay bail at the DOC facility where the inmate was housed. The 2018 pamphlet, not found at any location, does not contain this error.<sup>85</sup>

OIU further observed a poster at the Rikers Island bail window that contained similarly inaccurate information, instructing readers that checks should be made payable to “RICC” (Rikers Island Correctional Center). These instructions are in direct contrast to DOC’s website and the most recent versions of the bail payment posters produced for inmates and their families, which provide that checks and money orders are to be made payable to the “New York City Department of Correction.”

Moreover, out-of-date, inaccurate, and inconsistent information is not limited to written materials. A Rikers Island bail window attendant informed OIU that checks should be made

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<sup>85</sup> OIU observed a 2017 version of the MOCJ pamphlet, “How to Pay Bail in New York City,” at the Manhattan Detention Complex which similarly contained outdated material. Pamphlet, Mayor’s Office of Criminal Justice, How to Pay Bail in New York City (2017). As stated *infra* note 86, according to Local Law 127 of 2017, MOCJ and OCA should work together to provide complete and accurate information to potential sureties at courthouses.

payable to “RICC” and not to the “New York City Department of Correction.” Similarly, the bail window attendant at the Manhattan Detention Complex told OIU that checks should be made payable to the “Manhattan Detention Complex.” Indeed, OIU encountered an attorney who had followed the instructions on DOC’s own website and presented a cashier’s check made payable to “New York City Department of Correction” at the Manhattan Detention Complex bail windows, only to be turned away by DOC staff.

OIU also observed a lack of standardization and accuracy in the materials provided at the cashier’s windows in the criminal courthouses visited. For example, OIU observed a 2017 version of the MOCJ pamphlet, “How to Pay Bail in New York City,” at the Manhattan Detention Complex that contained the same incorrect information as the 2016 pamphlet found at Rikers Island regarding the entity to whom checks should be made payable, discussed *supra* page 29. Local Law 127 of 2017 requires that MOCJ make “reasonable efforts” to work with OCA “to promote the availability of complete and accurate information regarding the bail posting process to persons seeking to post bail.”<sup>86</sup> A higher degree of coordination and communication among MOCJ, OCA, and DOC is likely necessary to ensure that potential sureties who wish to pay bail “immediately and continuously” have the correct information to do so. (*See* Table 2 for OIU’s observations of materials present at each site.)

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<sup>86</sup> N.Y.C. LOCAL LAW 127 (2017), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3028945&GUID=ADF1B3E6-9A0A-469F-8C57-55EE771F5BFC&Options=ID|Text|&Search=criminal+justice>.

Location	2018 DOC "Need to Pay Bail?" Poster (Appendix A)	2018 MOCJ "How to Pay Bail in New York City" Pamphlet (Appendix B)	Outdated "How to Pay Bail in New York City" Pamphlet (2017 or 2016)	Other instructions on how to pay bail
Bronx Criminal Court				
Brooklyn Detention Complex				
Kings County Criminal Court	X			
Manhattan Detention Complex				
New York County Criminal Court			X	
Queens Criminal Court	X			X
Queens Detention Complex				X
Rikers Island			X	X
Staten Island Criminal Court	X			
Vernon C. Bain Center				
<b>Total</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>3</b>

Table 2. Bail Materials at DOC Facilities and NYC Criminal Courts January 2019 <sup>87</sup>

**Q: How do I pay bail?**

You can pay bail in the courthouse when the defendant is there, or at DOC facilities if the defendant is being detained there.

**Paying at the Courthouse**

You can pay bail in-person at a courthouse only when the defendant is present in court (typically during arraignment). Only cash is accepted (or credit card when the judge says that it as an option). To post bail at a courthouse, find out which courtroom is hearing the defendant's case. Then, notify the defendant's attorney, the court officer and the court clerk that you would like to pay bail. The court officer will make sure the defendant is held in the building for release, and the clerk will direct you to the cashier's office in the courthouse.

**Paying at DOC Facilities**

Once a defendant is detained at DOC facilities, you may only pay bail at DOC. You can pay bail at any DOC facility in the city (Brooklyn Detention Complex, Manhattan Detention Complex, Vernon C. Bain Center in the Bronx and Rikers Island in Queens). To pay bail at a DOC facility, you must provide personal identification as well as the New York State Identification Number (NYSID) of the defendant.

DOC accepts the following forms of payment:

- U.S. cash
- Cashier's / Teller's check in any amount not exceeding the bail figure;
- Bank, Federal Express, U.S. Postal, Traveler's Express Company or Western Union Money Order with each order no greater than \$1,000 (multiple orders are accepted)
- Credit or debit cards (using phones located in DOC facilities). Note: 6% processing fee applies.

No matter the form of payment, bring exact change. DOC does not provide change. Checks and money orders must be made out to the facility where you are paying bail, for example "Brooklyn Detention Complex," "Manhattan Detention Complex," "Vernon C. Bain Center," or "The Rikers Island Central Cashier" ("RICC").

For further information on inmates, bail, visiting hours, and travel directions call (718) 546-0700 or 311.

**Q: What if I am not in the city to pay bail?**

If you are not able to pay bail in person at a courthouse or DOC facility, you can still help bail someone out. You can transfer the money to the defendant's DOC commissary account using JPAY or Western Union and then the defendant can self-pay bail. This method has a few limits:

- (1) the receipt for bail will be in the defendant's name and not yours, meaning the money will be returned to him or her at the end of a case, not you;
- (2) you may need to transfer more money than the amount of bail to pay for fees and fines (call defendant to determine if there are any fines associated with his account); and
- (3) you must call the defendant to tell the defendant the money is in his account.

Once the money arrives, the defendant can ask a DOC official for Form #1502G, "Request for Self Bail" form, and self-pay bail.

**Q: How do I get my bail money back?**

If the defendant makes all court appearances, you are entitled to receive your bail money back (but a 3% fee will be charged, if the defendant is convicted). You should receive the money 8 weeks after the end of the case. You do not need to do anything to get this refund. If you move, you must send your new address to the Department of Finance, contact info below.

If it has been 8 weeks and you still have not received the cash bail refund, you can reach out to the Department of Finance's Treasury/Court Assets Unit to follow-up available at: [nyc.gov/contactcashbail](http://nyc.gov/contactcashbail) or 212-608-7619. Be sure to have the docket number or Treasury Receipt number available.

**Q: How can I use a commercial bail bondsman?**

Commercial bail bondsmen charge a fee and require cash or property (known as collateral) to write a bond and post it with the court to secure the defendant's release before trial. The fee is not refundable, but if the defendant appears at all court dates and has not violated any rules, the collateral is refunded. You can find commercial bail bondsmen through an online web search or in the yellow pages. Many of them also have offices near the courthouses, so you can also find them that way. Bail bondsmen may require other conditions for bonds and may charge fees for their services. The contract you sign with them will determine these conditions and fees.

Figure 3. "How to Pay Bail in New York City" 2016 pamphlet available at Rikers Island bail window

<sup>87</sup> In Table 2, blank cells indicate OIU did not observe any materials in that category at that location.



### 3. No Uniform Process Exists at Bail Windows

OIU's investigation also found an absence of uniform processes and procedures at DOC bail windows. The lack of a uniform protocol at bail windows can create unnecessary hardships and obstacles for those intending to pay bail "immediately and continuously." For example, a sign on the bail window at the Vernon C. Bain Center explicitly discourages individuals from knocking on the glass for attention, whereas one advocate reported that the bail window attendants at the Queens Detention Complex encourage individuals to knock on the glass. The helpfulness and friendliness of the bail window attendants also varied from window to window. Further the signage observed directing individuals to the entrance to bail window areas was inconsistent and often non-existent. For instance, although the window at the Queens Detention Complex is situated around the corner from the criminal courthouse in Queens, there are no signs indicating its location and the entrance is hidden under scaffolding and located behind another building. Similarly, there were no signs posted on the buildings in the complex on Rikers Island indicating the location of the bail window, which is housed in an otherwise unremarkable building annex. Indeed, OIU had to ask for directions four times before being able to find the building (*see* Figure 4).



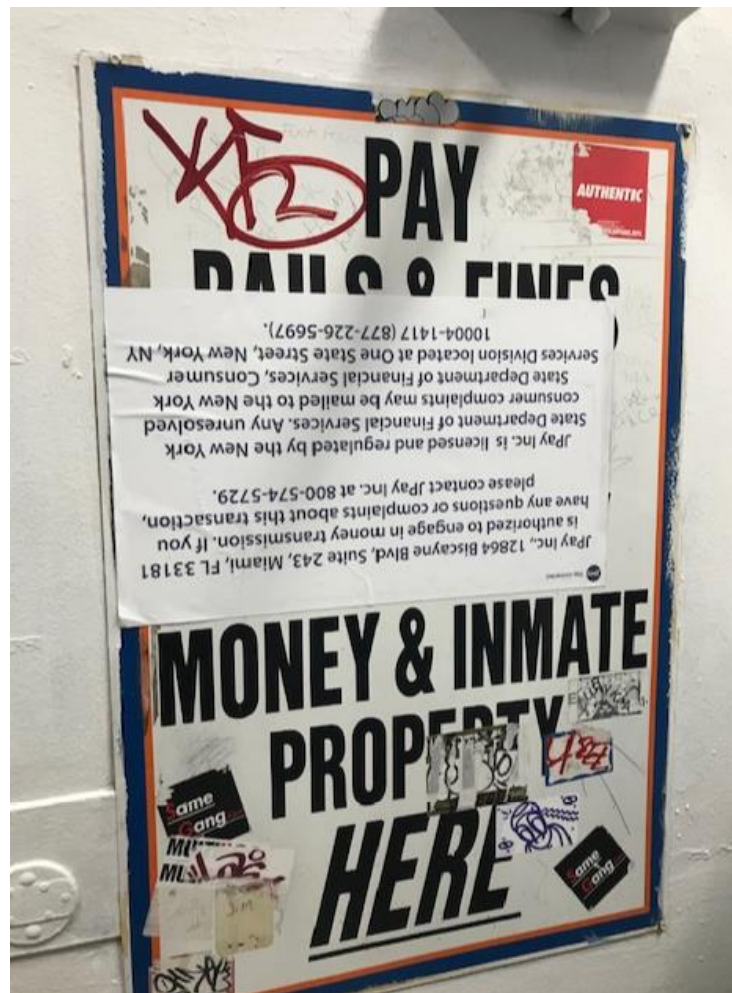
*Figure 4. Entrance to Bail Payment Area at Rikers Island*

Table 3, depicted below, further illustrates the above-mentioned conditions observed at each DOC facility bail window.

<b>DOC Facility</b>	<b>Bail Window Directional Signage Visible from Street</b>	<b>Clearly Marked Door/Entry to Bail Window</b>	<b>Method of Attracting Attention of Bail Window Attendants</b>
Brooklyn Detention Complex	✓	✓	bell
Manhattan Detention Complex	✓	✓	knocking
Queens Detention Complex	x	✓	knocking encouraged
Rikers Island	x	x	knocking
Vernon C. Bain Center	✓	x	wait for notice / knocking discouraged

*Table 3. Observed Conditions of Bail Windows at DOC Facilities*

OIU also observed the overall appearance of each DOC bail window location. The sites appeared to be fairly clean and orderly, and had adequate seating. The only exception to this was the Manhattan Detention Complex bail window area, where OIU observed general disarray, including, graffiti, discarded rags at the entrance, dirty floors, and a sign with information pertaining to JPay Inc., a state-licensed money transmitter, was posted upside down.<sup>88</sup>



*Figure 5. Manhattan Detention Complex Upside Down JPay Sign*

<sup>88</sup> On a subsequent visit to Manhattan Detention Complex, OIU observed that the upside down JPay sign had been removed.

#### 4. Bail Not Accepted During Blackout Periods

OIU spoke with advocates who confirmed that, contrary to Local Law 123's mandate that bail payment be accepted "immediately and continuously," blackout periods still exist throughout the boroughs whereby payments cannot be made when an inmate is being transported from the courthouse to a DOC facility or during the initial processing at a DOC facility.

In the October 2018 letter to the Council, and again at the December 3 Hearing, DOC acknowledged that blackout periods still exist, but alleged that this was only the case in the Bronx. DOC did not provide any details as to why blackout periods still exist even though such periods are prohibited, or what, if anything, is being done to eliminate them.

#### Issues with Paying Bail Online

DOC posits that it is in compliance with Local Law 123 because its online bail system has been functional since April 2018.<sup>89</sup> Local Law 123, however, requires that DOC provide locations to post "cash bail"<sup>90</sup> and the online bail system only accepts credit card bail. These two forms of bail are distinct legally, as they are listed as separate forms of bail under the Criminal Procedure Law.<sup>91</sup> Moreover, online bail payment is not, in practice, an adequate substitute for cash bail for the vast majority of inmates.

##### 1. Eligibility

As discussed above, in order to be eligible for online bail, an inmate must first be deemed by a judge to be eligible for credit card bail. Credit card bail is only granted in a small percentage of cases. Because judges typically will not order credit card bail *sua sponte*, a defendant must first

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<sup>89</sup> Letter from N.Y.C. Dep't of Corr. Letter to the N.Y.C. Council (Oct. 26, 2018) ("DOC launched its online bail system in April 2018, fulfilling the requirement of this law.")

<sup>90</sup> N.Y.C. ADMIN. CODE § 9-148(c).

<sup>91</sup> N.Y. CRIM. PROC. LAW § 520.10.

request it. OIU has learned that many judges are reluctant to grant credit card bail because it is considered an alternative to cash bail.

## *2. Prohibitive Fields and Fees*

Even when granted, online bail may still prove prohibitive for a large segment of the population because the payer is charged a non-refundable two percent transaction fee and required to enter his or her social security number (*see* Figure 2).

## *3. Self-Pay Kiosks are Not in Use*

DOC purports to have installed self-payment kiosks in courthouses and DOC facilities so that inmates eligible for credit card bail may post bail for themselves.<sup>92</sup> Many of the advocates we spoke with are not aware of any clients ever using a kiosk. To the extent that such kiosks are currently operational or will become operational in the future, however, it is not clear how inmates will be able to use them in practice due to the difficulties with accessing personal property. For example, an inmate's credit card will likely be contained in his or her wallet, which may be in the custody of DOC or the New York Police Department.

Per Local Law 125, Bail Facilitators are required to assist with the process of obtaining personal property. Based on conversations with advocates, it does not appear that DOC has currently staffed the Bail Facilitator position. Even assuming that Bail Facilitators do exist, however, DOC does not appear to have the adequate procedures in place for retrieving inmates' personal property. DOC currently maintains that inmates are able to "fill out a form to request property and the appropriate DOC officer will retrieve the property," but has not provided any specifics as to how or in what timeframe this is accomplished.<sup>93</sup> Therefore, it is unclear how DOC

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<sup>92</sup> E-mail from N.Y.C. Dep't of Corr. to the N.Y.C. Council (Mar. 29, 2019, 7:27 PM EDT).

<sup>93</sup> E-mail from N.Y.C. Dep't of Corr. to the N.Y.C. Council (Feb. 8, 2019, 7:20 PM EST).

is currently fulfilling, or plans to fulfill in the future, its mandate under Local Law 125 that inmates be allowed access to personal property to facilitate the payment of bail.

### Inmates Are Not Released Within the Three Hour Time Limit

Subject to certain exceptions, Local Law 123 mandates that DOC release any inmate for whom bail or bond has been paid or posted within the “required time period” of either the later of such payment being made, or the department’s receipt of notice that payment was made.<sup>94</sup> The “required time period” for purposes of this law was five hours beginning on October 1, 2017, four hours beginning on April 1, 2018, and three hours beginning on October 1, 2018.<sup>95</sup>

Notwithstanding the three hour release requirement currently imposed by Local Law 123, advocates report that it can take six to twelve hours for an inmate to be released once bail has been paid. As discussed above, the entire bail payment process is unnecessarily complicated and extended by DOC’s use of fax machines and hand deliveries to transmit information. In addition, advocates report what they perceive as a general lack of urgency on the part of DOC personnel. This is evidenced by DOC’s apparent reluctance to resolve administrative issues quickly, which has resulted in inmates remaining in DOC custody—following the payment of bail—overnight and through weekends. For example, advocates told us of specific instances where bail was paid for clients on a Friday afternoon but DOC took the position that it could not release the client until Monday to allow for the processing of paperwork. In these instances, advocates spoke of their reliance on intervention by personal contacts at DOC, MOCJ, and UCS to prevent their clients from unnecessarily spending the weekend incarcerated.

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<sup>94</sup> The timeframe for releasing inmates may be extended where (1) the inmate receives discharge planning services prior to release; (2) the inmate has a warrant or hold from another jurisdiction or agency; (3) the inmate is being transported at the time bail or bond is paid or posted; (4) the inmate is not in departmental custody at the time bail or bond is paid or posted; (5) the inmate requires immediate medical or mental health treatment; or (6) Section 520.30 of the criminal procedure law necessitates a delay. N.Y.C. ADMIN. CODE § 9-148(b).

<sup>95</sup> N.Y.C. ADMIN. CODE § 9-148.

As discussed *supra* pages 20–22 an individual paying bail at a DOC facility on behalf of an inmate must first complete a surety form. If this form is not completed at a DOC detention facility where the inmate is housed, advocates say that it can take approximately two to six hours for DOC to fax the form to the appropriate facility and then have it faxed back to the bail window. Once the form is faxed back, the individual can then make the bail payment and will be handed a physical receipt. From this point, however, according to advocates, it can still take another *six to twelve hours* for the appropriate person at DOC to receive notification in paper form that bail has been paid and then for the inmate to be released.

In practice, DOC begins to count its three hour obligation under Local Law 123 once the inmate’s housing facility has received notice that bail has been paid, rather than from the time that the bail payment receipt is stamped by DOC.<sup>96</sup> This method of calculation, however, means that (1) an inmate’s release time could take substantially longer than three hours depending on how long it takes for the housing facility to “receive” notice of payment by either fax or hand delivery; and (2) it is impossible for anyone other than DOC to calculate release time, as DOC is the only party with knowledge of when its housing facility has received notice. While Local Law 123 of 2017 does permit the release clock to start upon DOC’s “receipt of notice” that bail or bond has been paid, DOC should be deemed to have received notice of bail payment once a DOC bail window attendant has stamped a payment receipt. DOC’s current interpretation of the law, which requires notice to be received by the inmate’s housing facility—a process that could take hours post-bail payment—is beneficial to DOC but detrimental to the individuals Local Law 123 of 2017 was designed to protect.

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<sup>96</sup> E-mail from N.Y.C. Dep’t of Corr. to the N.Y.C. Council (Feb. 8, 2019, 7:20 PM EST).

At the December 3 Hearing, DOC asserted that its average post bail payment release time was four hours and 42 minutes. However, this average was based on an audit of just 43 individuals at only one location, Rikers Island.<sup>97</sup> Contrast this statistic with the six to twelve hour release time quoted by advocates and it becomes clear that more information—and from a greater, more representative, population set—is needed to assess DOC’s performance in this area. It would also be beneficial to see (1) how long it generally takes for a DOC housing facility to “receive notice” that bail has been paid (and therefore when DOC deems the three hour clock to have started); and (2) whether DOC is tracking the inmates who fall into one of the exceptions to Local Law 123’s three hour release requirement.<sup>98</sup> DOC maintains that such an audit will be completed this spring but has not provided any specifics as to timing or exact methodology.<sup>99</sup>

#### [DOC Has Failed to Provide Inmates and Sureties with Accurate Information about How to Place Holds Pursuant to Local Law 124](#)

Local Law 124 allows DOC to delay a defendant’s transportation for four to twelve hours following arraignment if requested by either DOC, or a non-profit contracted with the City, to facilitate the posting of bail. The not-for-profit entity referred to in Local Law 124 is CJA. Prior to the passage of Local Law 124, CJA made use of an informal system through which it asked DOC to place holds on individuals in the BEX Program while potential sureties worked to pay bail for them.<sup>100</sup> Local Law 124 codified CJA’s practice into law.

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<sup>97</sup> *Hearing Before the N.Y.C. Council Comm. on Justice Sys. & Comm. on Criminal Justice*, 35 (N.Y.C. Dec. 2018) (statement of Chief of Dep’t of N.Y.C. Dep’t of Corr.), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3714874&GUID=329A67B3-7F0A-41DB-A3D2-EB503F800657&Options=&Search=>

<sup>98</sup> For the list of exceptions, *see supra* note 38.

<sup>99</sup> E-mail from N.Y.C. Dep’t of Corr. to the N.Y.C. Council (Feb. 8, 2019, 7:20 PM EST).

<sup>100</sup> *See* N.Y.C. COUNCIL COMM. OF THE GOVERNMENTAL AFFAIRS DIVISION & COMM. ON FIRE AND CRIMINAL JUSTICE SERVICES, COMMITTEE REPORT (June 19, 2017), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=&Search=>



Prior to making a hold request, DOC or CJA must make direct contact with a person who indicates readiness and willingness to post bail for the inmate.<sup>101</sup> Unless they fall into a statutory exception, all inmates with bail set at \$10,000 or less are eligible for this hold.<sup>102</sup>

The ability to place the hold in an effective manner can be critical to the bail payment process, as the most favorable conditions for the successful payment of bail and subsequent release of an inmate occur when bail is paid immediately following arraignment, while the inmate is in the courthouse. Once the inmate has left the courthouse for a DOC facility, inmate release times increase dramatically because (1) DOC may not accept bail when the inmate is being transported or processed by the new facility (*i.e.*, during blackout periods); and (2) DOC's reliance on fax machines and hand deliveries as its primary methods of communication means that it can take hours for the transmission of information between the facility where bail is being paid and the facility at which the inmate is housed.

Although Local Law 124 provides that either DOC or CJA can effectuate this hold, in practice, CJA is the sole entity with responsibility for requesting the hold. DOC's website endorses and underscores CJA's role by referring to Local Law 124's hold as a "BEX hold" and cites to CJA for its hold-related data.<sup>103</sup>

OIU has learned that individuals from CJA will often request such holds be placed on their own upon learning during a BEX interview that a potential surety intends to come to the courthouse to pay bail. CJA will also request a hold if asked by an outside party, such as a bail fund or defense attorney. While the bail funds and larger criminal defense organizations are aware of CJA's role

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<sup>101</sup> N.Y.C. ADMIN. CODE § 9-149(a).

<sup>102</sup> N.Y.C. ADMIN. CODE § 9-149(b). For the list of exceptions, *see supra* note 41.

<sup>103</sup> DEP'T OF CORR., *Statistics and Compliance*, [https://www1.nyc.gov/assets/doc/downloads/pdf/Bail\\_Expedition\\_Program\\_Report.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Bail_Expedition_Program_Report.pdf) (last visited Mar. 14, 2019).

in this process and have direct contact numbers for individuals at CJA, it is unclear whether a lay person (such as an inmate’s loved one)—or lawyers with smaller criminal case loads—would be familiar with these holds or know to contact CJA to have one placed.

Indeed, we did not see CJA’s prominent role in placing the hold mentioned in any of the materials present at bail payment locations, with the exception of one poster by the bail window in the Queens Detention Complex (*see* Figure 7). The 2018 “How to Pay Bail in New York City” pamphlet instructs individuals who wish to pay bail at a courthouse to notify a defense attorney, the court officer and the court clerk that he or she wishes to pay bail and that the court officer will then “make sure the defendant is held in the building for release, and the clerk will direct you to the cashier’s office in the courthouse”<sup>104</sup> (*see* Appendix B.). These instructions are misleading. It is CJA, and not the court officer, who requests DOC place these holds in practice.

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<sup>104</sup> MOCJ’s 2016 and 2017 pamphlets on bail payment both contain similar language. *See* Pamphlet, Mayor’s Office of Criminal Justice, How to Pay Bail in New York City (2016); Pamphlet, Mayor’s Office of Criminal Justice, How to Pay Bail in New York City (2017).

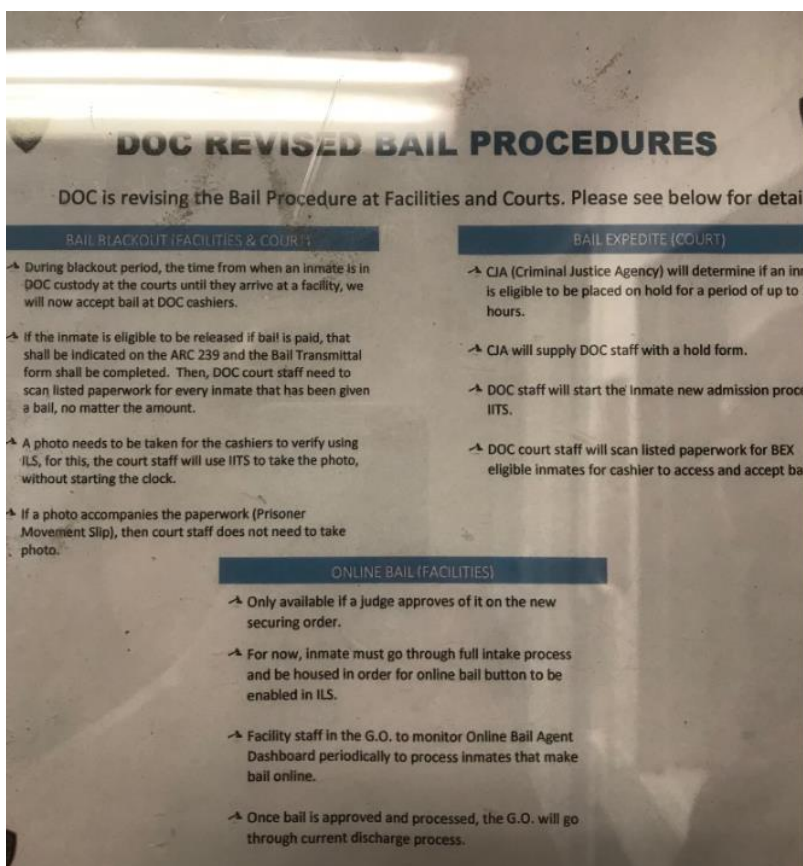


Figure 6. DOC Revised Bail Procedures Poster at Queens Detention Complex

Given the importance that these holds play in the bail process, the lack of information about the holds in the observed bail-related materials is a serious omission. Local Law 124 provides that all inmates who have bail set at \$10,000 or less, and do not fall under other exceptions, qualify for a hold.<sup>105</sup> As part of the BEX program, CJA will only come into post-arraignment contact with inmates in Manhattan, Queens, Brooklyn, and the Bronx who have bail set at under \$5,000. This means that inmates with bail set between \$5,000 and \$10,000 in the four largest boroughs—and any inmate with bail set at \$10,000 or less on Staten Island—will not come into contact with CJA in the ordinary course of proceedings. Accordingly, without proper instructional materials, inmates would have no way of knowing how to avail themselves of a hold even where eligible for

<sup>105</sup> N.Y.C. ADMIN. CODE § 9-149(b).

one. Therefore, it is critical that DOC, MOCJ and OCA work together to ensure that plentiful, uniform and accurate instructional materials regarding holds and how to effectuate them are properly placed in all sites where bail can be paid.<sup>106</sup>

### DOC May Choose Not to Honor a Hold Even When it is Correctly Requested

According to advocates, even when CJA correctly places a hold on an inmate at the Bronx courthouse, DOC may not honor that hold. Multiple sources report that DOC will remove an inmate who is subject to a hold from the Bronx courthouse and transport that inmate to a DOC facility if the duration of the inmate's hold coincides with the time that DOC buses are scheduled to depart from the courthouse. Furthermore, OIU has learned that on occasion DOC has bypassed CJA's BEX interview altogether if the departure of the next bus to a DOC facility is imminent.

### Presence and Role of Bail Facilitators

Local Law 125 provides that within 24 hours of taking custody of an inmate eligible for bond or bail, DOC must provide to the inmate in written form any information relevant to posting bail or bond; notify the inmate that he or she may post his or her own bail; and offer the inmate the opportunity to obtain personal property to do so. It is unclear whether DOC is fulfilling this mandate. DOC purports to have posters hung (Appendix C) and videos with instructions on how to pay bail playing in post-arraignment areas and intake facilities but OIU has not been able to verify this assertion.<sup>107</sup> Moreover, as referenced in our discussion of the self-pay kiosks *supra*

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<sup>106</sup> As previously discussed, MOCJ and OCA are expected to work together to provide bail-related informational materials in the criminal courthouses. N.Y.C. LOCAL LAW 127 (2017), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3028945&GUID=ADF1B3E6-9A0A-469F-8C57-55EE771F5BFC&Options=ID|Text|&Search=criminal+justice>.

<sup>107</sup> E-mail from N.Y.C. Dep't of Corr. to the N.Y.C. Council (Mar. 29, 2019, 7:27 PM EDT); *Hearing Before the N.Y.C. Council Comm. on Justice Sys. & Comm. on Criminal Justice*, 22–23 (N.Y.C. Dec. 2018) (statement of Chief of Dep't of N.Y.C. Dep't of Corr.), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3714874&GUID=329A67B3-7F0A-41DB-A3D2-EB503F800657&Options=&Search=>

pages 36–37, it is unclear to OIU how—if at all—DOC allows inmates access to their personal property in order to self-pay bail.

Local Law 125 also provides that within 48 hours of taking custody of an eligible inmate, DOC is required to ensure that Bail Facilitators meet with eligible inmates to explain how to post bail or bond. During the December 3, 2018 Hearing, DOC said that it initially envisioned spreading the Bail Facilitator responsibilities out amongst DOC employees already placed in other roles. DOC said that it had reconsidered, however, and instead would create dedicated Bail Facilitators.<sup>108</sup> It is unclear whether any progress has been made in this regard since the December 3 Hearing. Indeed, DOC still appears to be having employees with other responsibilities also perform Bail Facilitator functions.<sup>109</sup> Moreover, none of the advocates with whom OIU engaged had ever spoken to a Bail Facilitator, or had a client who had spoken to one. Council staff was informed that DOC had at some point explored contracting with non-profit entities to provide Bail Facilitator services, but no contract to that end has been executed to-date.<sup>110</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> E-mail from N.Y.C. Dep’t of Corr. to the N.Y.C. Council (Mar. 29, 2019, 7:27 PM EDT).

<sup>110</sup> *Id.*

## Conclusions

The bail payment process in New York City is unnecessarily complicated and confusing and DOC remains in substantial non-compliance with many aspects of the Bail-Easement Laws almost two years after they were passed.

### DOC's Acceptance and Processing of Bail Payments & Subsequent Release of Inmates

- DOC is not accepting cash bail payments “immediately and continuously” after an inmate is admitted to DOC custody, as required by Local Law 123 of 2017.
- The availability of online bail is largely theoretical for the vast majority of inmates. Indeed, online bail is only an option if the judge has ordered it and if the inmate has a loved one who is able to pay the transaction fee and willing to input their social security number on the website.
- There are no bail windows within one half mile of the criminal courthouses in the Bronx or on Staten Island and the online bail system is not a sufficient alternative.
- Assuming access to an operational bail window, other barriers exist to paying bail, including the fact that the written materials that DOC provides at such windows are often outdated, incorrect and only available in English. While the City has created updated bail informational materials, it has not disseminated them at all courthouses and DOC facilities.
- Neither the written materials present at bail windows, nor the processes employed for paying bail, are standardized. This means that an individual’s experience paying bail in New York City can vary widely based on the chosen bail window.
- Blackout periods still exist—especially in the Bronx—during which DOC will not accept bail payments on behalf of inmates who are being transported to, or initially processed at, a DOC housing facility.
- DOC is not releasing inmates within the required time frame of three hours post-bail payment. It reportedly can take six to twelve hours once bail has been paid for an inmate to be released, on top of the one-to-two plus hours it takes for DOC to process the completed surety form prior to bail payment.
- It is impossible for an outside party to assess when an inmate for whom bail has been paid might be released from custody, as DOC’s method for calculating release times is opaque. DOC has taken the position that the three hour clock to release an inmate starts running when a DOC housing facility receives notice of bail payment,

rather than at the time of bail is paid, which is stamped on the bail receipt possessed by both DOC and the surety. As DOC is the only stakeholder that can say when “notice” of bail payment has been communicated from the bail window to its housing facility, it is the only party with any visibility into its inmate release times.

### DOC’s Ability to Delay the Transport of Inmates

- DOC is not fully utilizing its ability under Local Law 124 to delay an inmate’s transportation from the courthouse to a DOC facility by placing a hold for four to twelve hours following arraignment to allow time for the payment of bail.
- In practice, CJA is responsible for making contact with DOC to request that the hold be placed, likely due to its historical (pre-Local Law 124) role in placing such holds. Despite the importance of the hold, explicit information about the nature of the hold and CJA’s role in placing the hold are absent from all bail information materials, with the exception of one poster found in the Queens Detention Complex. It is unclear how someone who is not familiar with the bail payment process would know to contact CJA to place the hold. Indeed, the pamphlet prepared by MOCJ instructs individuals who wish to have an inmate held at a courthouse to notify court officers, who do not place holds in practice.
- DOC, on occasion, will not honor CJA’s hold requests in the Bronx when such requests conflict with the times that buses are scheduled to leave the courthouse to transport inmates to housing facilities.

### DOC’s Mandate to Provide Inmates with Information Relevant to Posting Bail and Access to Individual Who Can Help Them Do So

- It is unclear whether DOC is providing certain information in written form to inmates to facilitate bail payment, or providing inmates with the opportunity to access personal property to pay bail within 24 hours of taking custody. It is also unclear how, in practice, inmates are allowed to access their personal property to pay bail, an issue that will likely become even more problematic if DOC’s self-pay kiosks ever function at full capacity.
- DOC has not yet placed dedicated individuals in the Bail Facilitator position as they told the Council they would in December 2018.

### Additional Factors Complicating the Bail Process

- *Outdated Communications Systems:* At all stages, the bail payment process appears to be unnecessarily complicated by DOC’s reliance on paper and an antiquated means of communication. As a general matter, it is often difficult to track down the exact individual to whom a certain paper should be delivered and fax machines

can sit unchecked for extended periods of time. This creates unnecessary delays and difficulties in what is already a too lengthy process.

- *Inadequate Record Keeping:* DOC's record keeping and data collection methods also appear lacking at best. For example, DOC does not appear to be tracking the release times of inmates post bail payment and/or whether any inmates were released outside the time period mandated by Local Law 123 because he or she fell into a statutorily permissible exception.
- *Unnecessary Delay on the Part of DOC Staff:* Certain behavior by DOC staff appears to lead to inefficiencies in the bail payment process. For instance, during our site visit, we observed that the attendants at the bail window at the Vernon C. Bain Center do not permit those paying bail to knock on the window for attention. This means that at each stage of the process, an individual paying bail will need to stand at the window until the attendant takes notice, adding an additional obstacle to an already inefficient process. It is unclear what accounts for this approach and attitude, but perhaps better training for bail window attendants on how to communicate with the public is necessary. There also seems to be a lack of coordination between DOC and UCS at courthouses, which further complicates the process.
- *Contact Based Process:* OIU has found the ability to navigate the bail process is largely dependent on relationships. Advocates who know the system are able to rely on intervention by contacts at organizations such as CJA, MOCJ, and UCS as their points of contact with DOC, an avenue that is not readily available to an unconnected individual who wants to pay bail.



## Recommendations

Based on these observations and conclusions, in order to eliminate the existing embedded and institutional roadblocks to the bail payment process, OIU recommends that:

### Bail Payment Processes & Informational Materials

- DOC open bail payment windows within a half mile of the criminal courthouses in the Bronx and on Staten Island.
- DOC eliminate the fees associated with online bail payment.<sup>111</sup> Those paying online bail should also be presented with the option to input an identifier other than a social security number.
- DOC eliminate blackout periods by accepting bail payments during inmate transport to, and initial processing at, DOC facilities.
- DOC standardize the processes for paying bail at its bail windows. There should be uniform signage posted to direct sureties to bail windows, and a uniform method of attracting the attention of bail window attendants, such as a buzzer or a light.
- DOC work with MOCJ and OCA to ensure that all materials available near cashier's and bail windows concerning the bail payment process are accurate, updated, and standardized. These materials should also be made available in languages other than English.
- DOC work with MOCJ and OCA to ensure that all materials available near cashier's and bail windows concerning the bail payment process contain explicit information on the placement of a post-arraignment holds, including information on how to contact CJA to do so.
- DOC ensure directional signage to bail windows is clear and visible at all DOC facilities and should be conscious of the fact that English is a second language for many.
- DOC ensure the BEX interview is a condition precedent to transporting an inmate from the courthouse to a DOC facility for a BEX-eligible inmate.
- DOC cease its practice of circumventing an inmate's right under Local Law 124 to a hold by placing the inmate immediately on a bus following arraignment as a matter of DOC's own convenience.

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<sup>111</sup> New York City Int. No. 1199, introduced on October 31, 2018, seeks to eliminate this fee, as well as the fee for in-person credit card bail payment. The Council expects this bill to be voted on and passed in the coming weeks.

- DOC either create and fill dedicated Bail Facilitator positions itself, or contract with an outside provider to do so. Bail Facilitators must be capable of both meeting with inmates inside DOC facilities and speaking to defense counsel and potential sureties who are outside of DOC facilities and in courthouses. Bail Facilitators should have access to all relevant data, be reachable seven days per week, and help to ensure that inmates are released within three hours of bail being posted.

### Training

- DOC staff at all levels receive additional training on bail processes and how to communicate more respectfully and clearly with the public.<sup>112</sup>

### Overall DOC Processes

- DOC modernize its communication systems and upgrade from its current reliance on faxing and hand delivery.
- DOC hold periodic meetings with advocacy groups to facilitate ongoing discussion about the bail payment process.

### Transparency

- DOC conduct periodic audits of its release times for inmates who have posted bail and report such results to the Council to ensure that DOC is in compliance with the three hours release requirement of Local Law 123 of 2017. DOC should do everything in its power to expedite all stages of the bail process including the amount of time it takes to approve a completed surety form.
- DOC be required to report on the number and duties of Bail Facilitators to the Council on a periodic basis.

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<sup>112</sup> It would also be beneficial for judges, members of the criminal defense bar, and other appropriate courthouse personnel to receive additional training on the appropriate processes and procedures involved in bail payment so that accurate information can be conveyed to inmates and their loved ones. Judges should also be further trained on the various, less utilized forms of bail that can be granted, with an emphasis on the importance of credit card bail as a means of facilitating online bail payment.

## Appendix A

### “Need To Pay Bail” DOC 2018 Family Poster



## THERE ARE OPTIONS.

If the court has set bail in your loved one's case, you may come **pay bail at any DOC facility.**

To pay bail, you can go to **whichever facility is most convenient for you, including:**

- The Central Cashier at the Visit Center on Rikers Island
- The Brooklyn Detention Complex
- The Manhattan Detention Complex
- The Queens Detention Complex
- The Vernon C. Bain Center in the Bronx

**The only exception** to this rule is for bail payments made to **Horizon Juvenile Center**. Horizon only accepts bail payments for those housed at Horizon, and checks/ money orders made at Horizon **MUST** be made out to the **New York City Department of Correction.**

All bail windows are open 24 hours per day, 7 days per week.

#### PLEASE NOTE

- Only the exact amount of bail payment will be accepted. DOC does not provide change.
- Checks and money orders **MUST** be made out to the **"New York City Department of Correction."**
- DOC does not accept bail on days when the incarcerated individual is out to court. On those days, bail must be paid at the courthouse or after they return to the jail.

► **Bail can also be paid online**, if the judge has given credit card bail payment for the case, from any computer, phone, or tablet. The online bail system is accessed through the public inmate lookup system: [nyc.gov/doc/lookup](http://nyc.gov/doc/lookup).

► **Your loved one, may also pay their own bail from their commissary account** once they get to a housing facility.

More details about how to pay bail can be found on the DOC website or by calling 311.

#### DOC ACCEPTS THE FOLLOWING FORMS OF PAYMENT:

- U.S. cash
- Cashier's / Teller's check in any amount not exceeding the bail figure
- Bank, Federal Express, U.S. Postal, Traveler's Express Company or Western Union Money Order with each order no greater than \$1,000 (multiple orders are accepted)
- Credit or debit cards (using phones located in DOC facilities)
- Online (if defendant is eligible)

For information about the online bail system visit:  
[www1.nyc.gov/site/doc/inmate-info/post-bail.page](http://www1.nyc.gov/site/doc/inmate-info/post-bail.page)



## Appendix B

### “How to Pay Bail in New York City” 2018 MOCJ Pamphlet

#### What is bail?

Bail is an amount of money or bond set by a judge at court to make sure the defendant will appear at future court dates. If the defendant or his/her friends and family are able to provide the money or bond to the court, the defendant is released before trial and must attend all court dates. If the defendant appears at all court dates, bail is refunded. But if the defendant misses a court date, the court keeps the bail. If no one is able to pay bail, the defendant is held at a Department of Correction (DOC) facility while waiting for trial.

Instead of setting bail, a judge may release a defendant on their own recognizance or send a defendant to a supervised release program (no money is required for either form of release). For certain felonies, a judge may deny bail and send a defendant to DOC custody.

#### Types of Bail

The judge determines the form of bail used. The most common forms are cash bail and insurance company bail bond.

**Cash bail:** Anyone can pay the full amount of bail with cash at the courthouse. At DOC facilities, other payment forms are accepted. Payer receives a full refund if defendant appears at all court dates.

**Insurance company bail bond:** Bail bondsmen will charge a non-refundable fee and will require collateral (cash or property), refunded at end of the case so long as defendant has made all appearances and complied with bondsmen requirements. Proof of income/assets may be required.

**Secured bond:** Defendant's release is secured with collateral of personal property equal or greater in value to the bond, or real estate with a value at least twice that of the bond.

**Partially secured bond:** Defendant's release is secured by providing a deposit of up to 10% of total bail amount, with promise to pay the rest if defendant fails to appear. Proof of income/assets may be required by the court. Payer receives a full refund if defendant appears at all court dates.

**Unsecured bond:** Defendant's release is secured by committing to pay the full amount of bail if defendant fails to appear. No property or money is required as a deposit/collateral, but the court may require proof of assets or income.

**Credit card:** Full amount of bail is charged to a credit card and returned if the defendant appears. Online bail payments must be paid with a credit card or debit card.

#### How to Pay Bail in New York City

2018  
Mayor's Office of Criminal Justice



#### More questions about paying bail?

If you still have questions after reading this brochure, call the NYC Criminal Justice Agency:

**Manhattan:** (212) 577-8710  
**Brooklyn & Staten Island:** (718) 330-1508  
**Queens:** (929) 398-0017 or (929) 398-0018  
**Bronx:** (718) 681-0408 or (718) 681-0408  
**General Helpline:** (840) 213-2683

#### Q: How do I pay bail?

You can pay bail in the courthouse when the defendant is there, or at DOC facilities if the defendant is being detained there, or online depending on eligibility requirements.

You can pay bail in-person at a courthouse only when the defendant is present in court (typically during arraignment). Only cash is accepted (or credit card when the judge sets that as an option). To post bail at a courthouse, find out which courtroom is hearing the defendant's case. Then, notify the defendant's attorney, the court officer and the court clerk that you would like to pay bail. The court officer will make sure the defendant is held in the building for release, and the clerk will direct you to the cashier's office in the courthouse.

Once a defendant is detained at DOC facilities, you may only pay bail at DOC. You can pay bail at any DOC facility in the city (Brooklyn Detention Complex, Manhattan Detention Complex, Queens Detention Complex, Vernon C. Bain Center or Rikers Island), regardless of where the individual is housed. If a defendant is housed at Horizon Juvenile Center, you may pay bail at Horizon Juvenile Center or any of the DOC facilities above. However, Horizon Juvenile Center only accepts bail for defendants housed there. To pay bail at any DOC facility, you must provide personal identification as well as the New York State Identification Number (NYSID) or Book & Case Number of the defendant.

DOC accepts the following forms of payment:

- U.S. cash
- Cashier's / Teller's check in any amount not exceeding the bail figure;
- Bank, Federal Express, U.S. Postal, Traveler's Express Company or Western Union Money Order with each order no greater than \$1,000 (multiple orders are accepted)

- Credit or debit cards (using phones located in DOC facilities)
- Online (if defendant is eligible; see below)

No matter the form of payment, bring the exact bail amount. DOC does not provide change. Checks and money orders should be made out to the "New York City Department of Correction." For further information on inmates, bail, visiting hours, and travel directions call (718) 548-0700 or 311.

#### Q: What if I am not in the city to pay bail?

If you are not able to pay bail in person at a courthouse or DOC facility, you can still help bail someone out in one of two ways.

- (1) Online, if the defendant is eligible. To check if someone is eligible for online bail payment, first use DOC's Inmate Lookup Service ([nyc.gov/doc/lookup](http://nyc.gov/doc/lookup)) to find the individual you wish to pay bail for. If the individual is eligible for online bail payment, the "Pay Bail" button at the bottom of the "Inmate Details" page will be blue. Click on the "Pay Bail" button and follow the on-screen instructions.
- (2) You can transfer the money to the defendant's DOC commissary account using JPAY or Western Union and then the defendant can self-pay bail. This method has a few limits: The receipt for bail will be in the defendant's name and not yours, meaning the money will be returned to him or her at the end of the case, not you; you may need to transfer more money than the amount of bail to pay for fees and fines (call the defendant to determine if there are any fines associated with the account); and you must notify the defendant the money is in their account. Once the money arrives, the defendant can ask a DOC official for Form #1502G, "Request for Self Bail" form, and self-pay bail.

#### Q: How do I get my bail money back?

If the defendant makes all court appearances, you are entitled to receive your bail money back. You should receive the money 8 weeks after the end of the case. You do not need to do anything to get this refund. If you move, you must send your new address to the Department of Finance, contact info below.

If it has been 8 weeks and you still have not received the cash bail refund, you can reach out to the Department of Finance's Treasury/Court Assets Unit at: [nyc.gov/contactcashbail](http://nyc.gov/contactcashbail) or 212-908-7819. Be sure to have the docket number or Treasury Receipt number available.

#### Q: How can I use a commercial bail bondsman?

Commercial bail bondsmen charge a fee and require cash or property (known as collateral) to write a bond and post it with the court to secure the defendant's release before trial. The fee is not refundable, but if the defendant appears at all court dates and has not violated any rules, the collateral is refunded. You can find commercial bail bondsmen through an online web search or in the yellow pages. Many of them also have offices near the courthouses, so you can also find them that way. Bail bondsmen may require other conditions for bonds and may charge fees for their services. The contract you sign with them will determine these conditions and fees.

## Appendix C

### “Need To Pay Bail” DOC 2018 Inmate Poster



## THERE ARE OPTIONS.

If the court has set bail in your case, a family member or friend may come **pay bail at any DOC facility**.

To pay bail, your loved ones can go to whichever facility is most convenient for them, including:

- The Central Cashier at the Visit Center on Rikers Island
- The Brooklyn Detention Complex
- The Manhattan Detention Complex
- The Queens Detention Complex
- The Vernon C. Bain Center in the Bronx

**The only exception** to this rule is for bail payments made to **Horizon Juvenile Center**. Horizon only accepts bail payments for those housed at Horizon, and checks/ money orders made at Horizon must be made out to the **New York City Department of Correction**.

All bail windows are open 24 hours per day, 7 days per week.

#### PLEASE NOTE

- Only the exact amount of bail payment will be accepted. DOC does not provide change.
  - Checks and money orders **MUST** be made out to the **"New York City Department of Correction."**
  - DOC does not accept bail on days when you are out to court. On those days, bail must be paid at the courthouse or after you return to the jail.
- **Your bail can also be paid online**, if the judge has set credit card bail payment for your case. If your bail can be paid by credit card, you can pay your own bail online from the kiosk while you are still in the court building.

► **Family and friends can also pay your bail online** from any computer, phone, or tablet. The online bail system is accessed through the public inmate lookup system: [nyc.gov/doc/lookup](http://nyc.gov/doc/lookup).

► **As a detainee, you may also pay your own bail from your commissary account** once you get to a housing facility. To do so, just request a self-bail form.

More details about how to pay bail can be found in your Inmate Handbook. If you have any questions about how to pay, reach out to:

- Your attorney
- The onsite bail facilitator
- Staff in the law libraries, social services areas, or programs

Family and friends may find bail information on the DOC website or by calling 311.

#### DOC ACCEPTS THE FOLLOWING FORMS OF PAYMENT:

- U.S. cash
- Cashier's / Teller's check in any amount not exceeding the bail figure
- Bank, Federal Express, U.S. Postal, Traveler's Express Company or Western Union Money Order with each order no greater than \$1,000 (multiple orders are accepted)
- Credit or debit cards (using phones located in DOC facilities)
- Online (if defendant is eligible)

For information about the online bail system visit:  
[www1.nyc.gov/site/doc/inmate-info/post-bail.page](http://www1.nyc.gov/site/doc/inmate-info/post-bail.page)



## Appendix D

### 1. *Local Law 123 of 2017:*

#### **§ 9-148. Bail payments and processing.**<sup>113</sup>

a. The department shall accept cash bail payments immediately and continuously after an inmate is admitted to the custody of the department, except on such dates on which an inmate appears in court other than an arraignment in criminal court.

b. The department shall release any inmate for whom bail or bond has been paid or posted within the required time period of the later of such payment being made or the department's receipt of notice thereof, provided that if an inmate cannot be released within the required time period due to extreme and unusual circumstances then such inmate shall be released as soon as possible. Such timeframe may be extended when any of the following occurs, provided that the inmate's release shall be forthwith as that term is used in section 520.15 of the criminal procedure law:

1. The inmate receives discharge planning services prior to release;
2. The inmate has a warrant or hold from another jurisdiction or agency;
3. The inmate is being transported at the time bail or bond is paid or posted;
4. The inmate is not in departmental custody at the time bail or bond is paid or posted;

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<sup>113</sup> N.Y.C. ADMIN. CODE § 9-148.

5. The inmate requires immediate medical or mental health treatment; or

6. Section 520.30 of the criminal procedure law necessitates a delay.

c. The department shall accept or facilitate the acceptance of cash bail payments for inmates in the custody of the department: (i) at any courthouse of the New York City Criminal Court, (ii) at any location within one half mile of any such courthouse during all operating hours of such courthouse and at least two hours subsequent to such courthouse's closing, or (iii) online.

d. For the purposes of subdivision b, the term “required time period” means five hours beginning on October 1, 2017, four hours beginning on April 1, 2018, and three hours beginning on October 1, 2018.

Subdivisions *b* and *d* of Local Law 123 took effect on October 1, 2017, subdivision *a* and *c* took effect six month after enactment, on July 22, 2017.<sup>114</sup>

2. *Local Law 124 of 2017:*

**§ 9-149. Admission delays.**<sup>115</sup>

[Effective Sept. 20, 2017] a. In order to facilitate the posting of bail, the department may delay the transportation of an inmate for admission to a housing facility for not less than four and not more than 12 hours following the inmate’s arraignment in criminal court if requested by either the department or a not-for-profit corporation under contract with the city to provide pretrial and other criminal

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<sup>114</sup> N.Y.C. LOCAL LAW 123 (2017), *available at*: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991007&GUID=FF218555-5363-4980-A47A-3350F91C43C5&Options=ID|Text|&Search=bail>

<sup>115</sup> N.Y.C. ADMIN. CODE § 9-149.

justice services, including interviewing adult defendants either before or after such persons are arraigned on criminal charges, has made direct contact with a person who reports that he or she will post bail for the inmate.

b. Such delay is not permissible for any inmate who:

1. Appears or claims to have a health or mental health condition that requires attention during the time period of such delay, notwithstanding the requirements of title 8 of this code;

2. Appears to be physically incapacitated due to drug or alcohol intoxication;

3. Requests medical attention or appears to require immediate medical attention;

4. Has bail set in an amount of 10,000 dollars or more; or

5. States, upon being informed of the delay permissible pursuant to this section, that he or she will not be able to post bail within 12 hours or otherwise indicates that they do not wish to be subject to such delay.

c. This section does not require the department to exceed the lawful capacity of any structure or unit, or require the department to detain inmates in courthouse facilities during such times as correctional staff are not regularly scheduled to detain inmates provided that the department must provide for the regular staffing of courthouse facilities for at least one hour after the last inmate was taken into custody on bail.



d. [Repeals June 30, 2022] Beginning July 1, 2018, the department or its designee shall submit to the council an annual report regarding the implementation of subdivisions a and b of this section. Such report shall include the following information:

1. The locations in which the department has implemented the provisions of this section;

2. In such locations, the number of inmates whose admission to a housing facility was delayed pursuant to this section;

3. The number and percentage of such inmates who posted bail during such delay and the number and percentage of such inmates who posted bail during the two calendar days following such inmates' arraignment; and

4. The number of inmates whose admission to a housing facility was delayed and who required medical treatment during such period of delay.

Local Law 124 took effect 60 days after it became law. It was enacted into law on July 22, 2017.<sup>116</sup>

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<sup>116</sup> N.Y.C. LOCAL LAW 124 (2017), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2991020&GUID=AE347DDA-968F-4BF8-B85E-22F1E36FB294&Options=ID|Text|&Search=bail>

3. *Local Law 125 of 2017:*

**§ 9-150. Bail facilitation.**<sup>117</sup>

Definitions. As used in this section, the following terms have the following meanings:

Bail facilitator. The term “bail facilitator” means a person or persons whose duties include explaining to eligible inmates how to post bail or bond, explaining the fees that may be collected by bail bonds companies, taking reasonable steps to communicate directly with or facilitate inmate communication with possible sureties, and taking any other reasonable measures to assist inmates in posting bail or bond.

Eligible inmate. The term “eligible inmate” means a person in the custody of the department held only on bail or bond.

a. Within 24 hours of taking custody of an eligible inmate, the department shall provide to such inmate the following information in written form: (i) the inmate’s amount of bail or bond, (ii) the inmate’s New York state identification number or booking and case number or other unique identifying number, (iii) options for all forms of bail payment and all steps required for such payment, including the locations at which a surety may post bail and the requirements for so posting, and (iv) any other information relevant to assisting the inmate in posting bail or bond.

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<sup>117</sup> N.Y.C. ADMIN. CODE § 9-150.

b. Within 24 hours of taking custody of eligible inmates, the department shall notify such inmates that they may post their own bail. Within such time period, the department shall, to the extent practicable and in a manner consistent with officer safety and all applicable laws, offer such inmates the opportunity to obtain property, including personal contact information and financial resources, that such inmates may require for the purpose of posting bail and which is stored in such inmate's personal property, provided that any member of the department who accesses such inmate's property pursuant to this subdivision shall request access only for the purpose of facilitating posting bail.

c. The department shall ensure that bail facilitators meet with all eligible inmates within 48 hours of their admission to the custody of the department, that eligible inmates have continued access to bail facilitators, and that bail facilitators are provided with reasonable resources necessary to fulfill their duties.

This local law took effect 180 days after it became law. It was enacted into law on July 22, 2017.<sup>118</sup>

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<sup>118</sup> N.Y.C. LOCAL LAW 125 (2017), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3023520&GUID=9E435A9D-B4F5-4F63-9440-5E4701459D00&Options=ID|Text|&Search=bail>