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New York Bail Reform Opposition Testimony Provided by President Beth Chapman

Introduction

For generations in America, monetary bail has proven to be the most effective (and cost effective) way to insure the appearance of the defendant in Court.

The private bail industry has an astounding record of reliability and accountability at no cost to the taxpayer. Bail agents and the insurance company backing the bonds—not the taxpayer—are monetarily responsible for defendants released on commercial bail. If a defendant flees, the bail agent must return the defendant to jail or pay the Court., so bail agents not only have a financial interest in making sure a defendant appears in Court, but they also have a fiduciary commitment to the Courts, taxpayers and victims of crime.

Due to pressure from well-funded “social justice” special interest groups, some states and counties have recently begun a disastrous experiment: taxpayer-funded pretrial services programs that are neither financially or physically responsible for their clients, nor do they attempt to apprehend a defendant if they fail to appear in Court.

Already straddled with a budget deficit of 4.1 billion dollars, New Yorkers are on the chopping block to be the next test subjects in expanding pre-trial services programs...and they aren't being told the whole story.

The Costs to the Taxpayer of Pretrial Services

As New York considers implementing bail reform statewide, its citizens need to realistically consider the impact that will have on public safety and the state's already overburdened budget, as well as think through whether it will actually end up hurting the people it seems designed to help.

In its attempt to placate the various special interest groups that have been banging the drum of so-called "criminal justice reform," the New York State legislature appears to be rushing into the same mistake that states like New Jersey have made. If Gov. Cuomo and the lawmakers in Albany are hell-bent on taking such an extremist position as ending the existing bail system as we know it, they at least owe it to the citizens of New York to provide some factual basis for their decision in the legislation.

But there is none.

In the bill, Part C reads:

"The legislature finds and declares that there is a present need to revise New York's procedures regulating release of persons charged with criminal offenses pending trial ...so that fewer presumed innocent people are held pretrial."

These claims are made without any citation to a study done to justify the "present need." There's no reference to the numbers of defendants or crime victims that the legislation will impact. There is no mention made at all of the cost of this bill to the taxpayer.

The experience of other states that have implemented bail reform provides clear examples of the criminal chaos and economic disaster of shifting the costs from the defendants to the taxpayer and removing a key element of responsibility from the criminal justice system.

With no cost analysis included in the bill, taxpayers quite literally have no idea what this experiment is going to cost them. However, we can make some estimates.

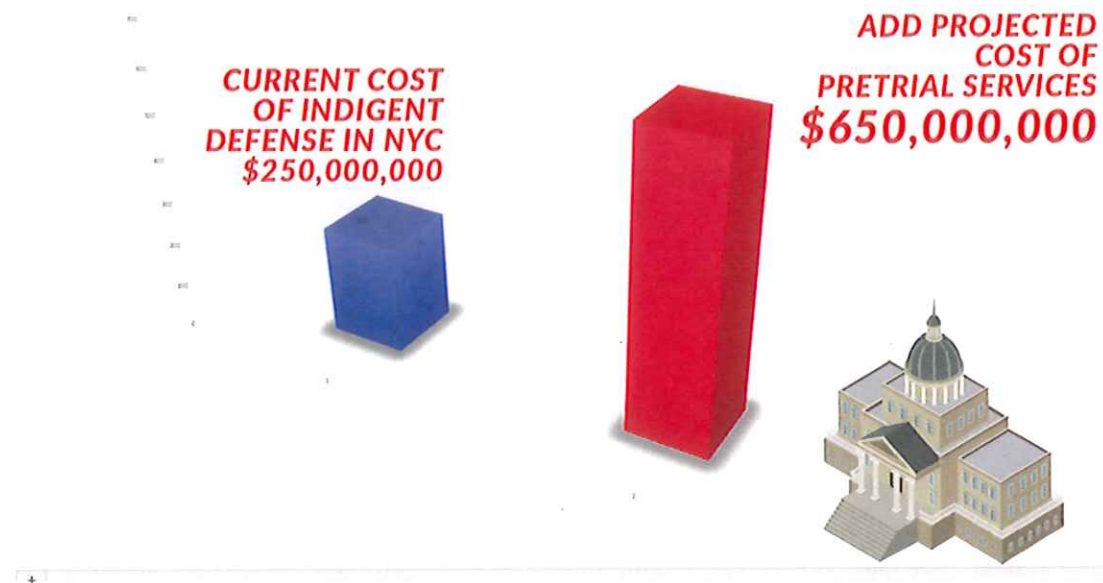
Cost Comparison to Washington D.C. and New Jersey

The experiences of Washington, DC and the state of New Jersey illustrate many of the problems that New York will face if they follow this proposal.

New York has twice the crime of neighboring New Jersey, which gives us another way to estimate cost. When bail reform was implemented in New Jersey, it was estimated in an [exhaustive study by Towson University](#) that the net cost would be over \$215,00,000 (215 million dollars).

Based on the FBI crime statistics and given that the population of New York State is well over twice the population of New Jersey, it seems fair to assume that the New York system will cost close to half a billion dollars a year, in the vicinity of \$400 to \$500 million.

PROJECTED COST TO TAXPAYER: BEFORE & AFTER "BAIL REFORM"



This huge burden will be added to the bill for taxpayers, who already face huge costs in the criminal justice system. In New York City alone, over \$250 million a year is currently spent on indigent defense. Adding just the lower estimate of the cost of pretrial services to just what New York City alone spends, and you're looking at taxpayers putting around \$650 million per year into defending and supervising arrestees.

No wonder there are no cost figures included in the pending legislation.

However the challenge that most of New York's counties will face outside of New York City add to the grim picture. Again, with no supporting studies the current legislation provides little guidance but looking at a smaller city like the nation's capital Washington DC gives us some basis to estimate.

With a population of slightly over 700,000, Washington DC is often used as an example of the benefits of pretrial services, but the numbers tell a very different story. The cost to detain, process, release and supervise just one defendant is between \$3,250 and \$4,062. The District of

Columbia's "free" system costs \$65 million per year and has helped it become one of America's most dangerous cities.

Reading the proposed legislation, it appears that every county in New York would be required to provide pretrial services at taxpayer expense. This is another area where this ill-thought proposal will create unforeseen new problems for New Yorkers, because transitioning to the use of a "Pretrial Services Agency" to handle criminal defendants will create extraordinary new burdens for New York's counties, especially for its many smaller rural counties in Upstate and Western New York.

Look at the numbers. New York State has 62 counties but most of the crime – 60% – comes from just eight of those counties; the ones that make up Metropolitan New York City. In Washington DC, each (taxpayer-funded) pretrial employee services an average of 45 defendants per week. Using this as a baseline, we can make some estimates about just how many employees each county will require based on current crime statistics.



A full 80% of New York counties — 52 of New York 62 counties — simply don't have enough defendants each week to support the need for an agency on an ongoing basis. Since legislation has no cost analysis included, the economic impact of this was hard to calculate. In New Jersey, smaller counties were punished with an unfunded mandate. Will this be the fate of rural counties in New York?

The realities of the criminal justice system will provide even more challenges for the overwhelming majority of New York's counties. Revenues from fines and filing fees will drop, costs currently covered by defendants will be shifted to the taxpayers, and the need for an efficiency docket will dwindle.

The entire state will also lose funds that currently go to the general fund. How much state revenue this currently represents is difficult to track, however City and State New York reported in 2016:

The city's general fund received \$2.49 million from the two major bail-related sources: fees levied on bail when the defendant is convicted of a crime and bail a judge decides has been forfeited to the city because a defendant did not show up to court or abide by other conditions imposed on them, according to the New York City Independent Budget Office.

These are the frightening budgetary realities of the bail reform proposal and they don't even take into account the cost of the big jump in crime that New Yorkers can expect if bail reform passes.

The Deadly Impact on Crime

Bad economics aside, the most frightening outcome for New York of this legislation will be the effect it has on crime for the average New Yorker.

One of the immediate impacts of bail reform in New Jersey was a 13% jump in the crime rate. In Washington, DC — one of the "success stories" of pretrial release — one out of every 21 residents will be a victim of property crime in any given year and a staggering 1 out of 70 will be victims of violent crime.

The New York legislation says that:

The bill also revises existing process remanding individuals in jail before trial, so the pretrial detention is used in limited cases involving high risk of flight or a current risk to the physical safety of a reasonably identifiable person or persons, and comports with Supreme Court jurisprudence regarding required substantive and procedural due process or for detention.

While the idea of only detaining those who are clear flight risks or who offer a specific threat may appeal to the do-gooder sensibilities of the special-interest groups who are pushing these proposals, it ignores the real world impact of releasing criminals without responsibility and with little supervision.

In metropolitan areas like the city of Houston in Harris County, TX, switching to pretrial supervision has literally doubled the number of people who do not show up for trial. As the Houston Chronicle reported in January 2018, since pretrial services:

...went into effect in June, more than 8,000 misdemeanor defendants have been released on unsecured bonds, yet more than 40 percent failed to appear for subsequent court

hearings. The rate is nearly double that of defendants with personal bonds and far higher than the 8 percent failure rate for those with bail bondsmen providing surety bonds, according to data released by Harris County in November.

As Detective Joe Indano of South Plainfield, New Jersey said after his state implemented its bail reform legislation:

"Nobody's afraid to commit crimes anymore. They're not afraid of being arrested, because they know at the end of the day, they're going to be released. It's catch and release. You're chasing around the same people over and over again. They're being released and going back and offending and now you have more people as victims."

Another law enforcement official put it more bluntly, saying "we can't protect you anymore."

According to the 2016 crime statistics, property crimes such as burglary already have only a 13% arrest rate. The "catch and release" pretrial system just puts the criminals right back out on the street to commit such "nonviolent" offenses as robbery and breaking and entering . The future victims of home invasion and assault do not fit the standard of "easily identifiable."

The misguided bail reform movement has had real-life consequences across the country for victims of crime like Shima Howard, a domestic abuse survivor in Atlanta, Georgia. As Shima recently wrote in a letter to the mayor, sharing her personal experience of being re-victimized by the court system in order to warn her about the "one-sided scare tactics" weaponized by bail reform advocates:

I attempted to obtain a new restraining order and was told by the Judge he could not grant one because the perpetrator had not physically assaulted me during this latest

incident. I argued the only reason he didn't assault me is because he didn't successfully kick in the door before he was arrested on my property. I was still denied the protective order. At the end of the day, I felt like the justice system failed me. I lived in constant fear that my perpetrator was above the law.

Domestic violence is a misdemeanor offense in the state of Georgia. As I understand it, federal lawsuits have targeted misdemeanor offenses for unsecured release with no financial accountability for the crime committed. This blanket release of defendants does not take into account the actual crime and the impact of such release for the victims of crime.

However, one of the dirty little secrets of bail reform is that it doesn't work particularly well for the defendants, either.

The New York proposal discusses the idea of "least restrictive" means of detention, by which they mean doing away with bail and replacing it with other systems that include mandatory drug testing or wearing an electronic monitor. It doesn't take too much thought to realize that these alternatives are not less restrictive in the real world than someone being able to pay bail and continue on with their lives as normal until their trial begins.

Non-Monetary Release Recommendations & Conclusion

Although we support the commercial bail industry and feel monetary bail is the best option for the criminal justice system, we understand the need for certain occasions when non-monetary or "own recognizance" bonds are necessary or preferred. At no time do we as an industry feel that judicial discretion be removed from the equation totally.

The commercial bail industry stands by the below core principles for release on recognizance (ROR) and non-monetary release:

- **Eligible** - Non-monetary release as a first option for violation of traffic laws, and look at what traffic laws can be completely de-criminalized.
- **Eligible** - Non-monetary release as a first consideration for first time offenders with no criminal history.
- **Eligible** - Non-monetary release as a first consideration for individuals with no failures to appear (FTA)
- **Not Eligible** - Non-monetary option for an individual currently out on a bond for a felony or misdemeanor.
- **Not Eligible** - Non-monetary option for someone convicted of a felony in the past 3 years or misdemeanor in the past 1 year.
- **Not Eligible** - Non-monetary release option for someone with multiple cases or in multiple counties.
- **Not Eligible** - Any release on crimes where there is a victim should be guaranteed and supervised.
- **Not Eligible** - Any defendant who has previously failed to appear on an OR bond on a criminal charge shall only be released with secured bail and would not be eligible for another OR bond for at least one year.
- **Not Eligible** - Any defendant currently released on a secured bond for a felony offense would not be eligible for non-monetary release.

- **Not Eligible** - Any defendant currently on a non-monetary bond would not be eligible for a second non-monetary bond in any county.

- **Not Eligible** - Any defendant who has been charged with a sexual assault on a child/minor causing great bodily harm would not be eligible for non-monetary release.

- **Not Eligible** - Any defendant who has been convicted of a charge of escape in the last five years would not be eligible for non-monetary release.

- Most importantly, a policy should be created that stops unlimited non-monetary release for any defendant.

Simply put: bail works. It's got a proven track record of working for the victims of crime, the criminal justice system and most importantly, the taxpayer.

A risk assessment from Pretrial Services does little to alleviate concerns that someone just arrested is not a risk or is likely to appear, because the risk assessment is based only on information currently available. As Nevada Governor Sandoval said as he vetoed a "free bail" bill recently:

No conclusive evidence has been presented showing that the risk assessment methods are effective in determining when it may or may not be appropriate to release a criminal defendant without requiring bail.

Pretrial services can be an option for the judge to consider but it should never be the starting point or replace the system that has proven effective in every way: the commercial surety bail industry.



Submitted by Beth Chapman

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