

Cuomo vetoes bill protecting charitable bail bond groups

12/21/2011 COMMENTS (0)

ALBANY, N.Y., Dec 21 (Reuters) - New York Gov. [Andrew Cuomo](#) has vetoed legislation that would have allowed nonprofit groups to post bail for poor defendants without being subject to state laws regulating bail-bonds businesses.

The bill, passed by both houses of the legislature in June, would have given so-called "charitable bail" organizations registered with the Attorney General's office an exemption from licensing requirements imposed on bail-bonds businesses, which often require collateral or charge interest when they're hired to post bail.

In contrast, charitable bail organizations don't recoup bail money, and thus cannot meet the "significant fiscal burdens" that go along with licensing, including licensing fees and posting "blanket bonds" used to pay courts if defendants fail to show up for hearings or trials, according to a bill memo.

The organizations developed after public defenders' offices found that many of their clients were languishing in jail because they were unable to post bail. As a result, supporters of the proposal said, defendants often lose their jobs and are unable to care for their families.

According to a 2010 report by the international think tank Human Rights Watch, 87 percent of defendants arrested in New York City in 2008 whose bail was set at \$1,000 or less were unable to post bail. On average, those defendants, most of whom were charged with nonviolent crimes such as shoplifting or drug possession, spent almost 16 days in jail awaiting trial, which the report said could lead to the loss of a job and put strains on a defendant's family.

Statewide, tens of thousands of defendants are kept in jail each year for being unable to post bail, according to the report.

Charitable bail groups remain rare in New York; the only currently active organization is the Syracuse Jail Ministry, which posts half of the bail for up to 500 defendants each year in Onondaga County, which includes Syracuse. Repeated calls to the Ministry were not returned.

'AVOIDED ANY TYPE OF OVERSIGHT'

The bill was sponsored by Sen. Gustavo Rivera, a Bronx Democrat, who modeled the proposal on the work of the Bronx Freedom Fund, an affiliate of the public-defense office Bronx Defenders that posted bail for nearly 200 people between 2007 and 2009, before a state judge ruled that the Fund's work violated the law.

"The Bronx Freedom Fund has avoided any type of oversight during its year and a half existence -- judicial, regulatory, or otherwise -- and this in and of itself is against public policy," Supreme Court Justice Ralph Fabrizio wrote in a June 2009 ruling rejecting bail the Fund had posted on behalf of William Miranda, who had been charged with assault.

Miranda's prosecutors argued that because the Freedom Fund was an offshoot of Bronx Defenders, it was an ethical breach for it to routinely post bail for the Defenders' clients. Fabrizio dismissed that argument, but wrote the ethics issue "is far from settled."

Unlike other states, New York does not bar attorneys from posting bail for clients.

In a memo accompanying his veto, Cuomo wrote that while providing bail for poor people is a "laudable goal," the bill lacked any mechanism for the oversight of charitable bail groups.

"Over time, laws governing the bail bonds business have been developed and refined to ensure robust oversight of an industry that is vulnerable to abuse," Cuomo wrote. "Charitable bail organizations, as proposed under this bill, would not be subject to any of these protections."

Cuomo said he would work with lawmakers "to develop an approach that balances the need to provide bail funding to those who are financially unable to afford it with sufficient oversight and controls."

CONCERNS OF 'CRIMINAL ACTIVITY'

While Cuomo did not specify what type of regulation he'd like to see, Fabrizio hinted in his Miranda decision at some potential pitfalls of unregulated bail groups, including the possibility that they could be funded "by criminal activity" and the extent of a group's relationship with a public defender's office.

But supporters of the bill, which had been crafted as a response to Fabrizio's concerns, said the benefits of being released on bail far outweigh the costs of keeping defendants locked up before trial.

"The simple act of posting bail allows defendants to maintain their jobs, parent their children, and engage in community life while their court cases are pending," said David Feige, a former Fund board member and former Bronx public defender.

More than half of the cases in which the Fund posted bail were dismissed or disposed without a criminal conviction, and more than 90 percent of the defendants made all of their court appearances after being released, according to Feige. In contrast, about 95 percent of all defendants who cannot afford bail plead guilty.

Sen. Rivera said he would tweak the proposal during the upcoming legislative session, which begins next month, but would not elaborate on what a regulatory scheme for charitable bail groups could look like.

"The purpose is ultimately the same, to ensure that individuals who cannot afford to pay bail have another recourse," Rivera said through a spokeswoman.

A spokesman for the governor declined further comment.

(Reporting by Dan Wiessner)