



## NYCLU Challenges Cash-Only Bail

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NEW YORK—The New York Civil Liberties Union has requested permission to file a brief with the New York State Court of Appeals that argues that state law requires judges to authorize at least two forms of bail for criminal defendants.

The case, *McManus v. Horn*, concerns a Bronx trial court’s decision to hold a pre-trial defendant on “cash-only” bail with no alternative method for pretrial release – meaning that the individual, who had not been convicted of any crime, had to pay cash up front to be released from jail while his case moved through the court system.

The Bronx Defenders challenged the judge’s ruling, arguing that state law requires courts to provide at least two bail options. The case is now before the Court of Appeals, the state’s highest court.

“People shouldn’t be forced to languish behind bars simply because they’re poor,” NYCLU Executive Director Donna Lieberman said. “State law requires judges to provide more than one bail option to promote fairness and equity in the criminal justice system. It’s time for judges to follow the law and ensure that all defendants, whether rich or poor, have access to bail.”

The NYCLU’s amicus brief raises three central points:

In the 1960s, the State Legislature reformed the state criminal code to provide a range of less restrictive bail alternatives in response to national and international reform efforts aimed at ensuring that pre-trial release was equally available to rich and poor.

Research overwhelmingly shows that permitting cash-only bail unjustly discriminates against the poor and people of color. (In New York City, black and Latino people constitute 89 percent of all pretrial detainees held for misdemeanors on bail of \$1,000 or less.) Pretrial detention leaves people unable to work, attend school, care for their families, or effectively participate in their own defense. It leads to disproportionately higher rates of guilty pleas and longer sentences for the poor and people of color.

Cash-only bail effectively keeps people in jail for no other reason than the fact that they are poor, and violates the constitutional prohibition against excessive bail.

“The State Legislature passed reforms decades ago intended to prevent this injustice, but courts continue to impose cash-only bail,” said NYCLU Senior Staff Attorney Taylor Pendergrass, lead counsel on the brief. “A decision in this case has the potential to actually implement these long overdue reforms, and begin remedying the inequalities that result in poor New Yorkers and people of color being locked up at taxpayer’s expense for no other reason than their poverty.”

The NYCLU also maintains that requiring alternatives to cash-only bail provides an important safeguard given New York State’s dysfunctional public defense system, in which poor defendants often appear at arraignment without any defense counsel present to argue on their behalf for reasonable bail that they can afford.

The following organizations joined the NYCLU on the amicus brief: the American Civil Liberties Union, the Legal Aid Society, the New York State Defenders Association, the Center for Appellate Litigation, the New York State Association of Criminal Defense Lawyers, the Pretrial Justice Institute, Five Borough Defenders and Human Rights Watch.

In 2007, the NYCLU filed a landmark class-action lawsuit charging the state with failing its constitutional duty to ensure that poor people accused of crimes receive meaningful and effective counsel. In a historic 2010 decision, the state Court of Appeals ruled that the case, *Hurrell-Harring v. The State of New York*, could proceed to trial.