



Fact Sheet: Update on the Litigation in the Fifth Circuit to End Wealth-Based Detention in Harris County (Houston), TX *New York Prosecutor Files Amicus Brief in Support*

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As advocates in New York work on bail reform (including bail bonds reform, community bail funds, and legislative bail reform), many are watching a court case in Houston, TX, known as *O'Donnell v. Harris County, Texas*. In the Fifth Circuit federal court, civil rights lawyers are suing to challenge wealth-based pretrial detention and to eliminate cash bail. They won a historic ruling in April, when the judge ruled against Harris County's money-based bail system.¹

The case is now on appeal by Harris County. Eleven diverse groups/parties have filed amicus briefs urging the court to rule on the constitutional issues of poverty-based pretrial detention.² These are:

- The Conference of Chief Justices
- 67 current and former district attorneys, US Attorneys, state attorneys general, and governors;
- Current and former Chiefs of Police, Sheriffs, and corrections officials;
- Religious leaders;
- The American Bar Association;
- The National Association of Pretrial Services Agencies and Pretrial Justice Institute;
- The Cato Institute;
- The Texas Public Policy Foundation, Right on Crime, and R Street;
- The Constitutional Accountability Center;
- The National Association of Criminal Defense Lawyers;
- Judge Darrell Jordan (a judge from Harris County, TX)

For those working on bail reform in New York, it's notable that Manhattan District Attorney Cy Vance signed onto the brief filed by the prosecutors. In the brief, Vance and company:

1. *Contend* that elimination of cash bail will:
 - a. Contribute to the legitimacy of the criminal justice system;
 - b. Enhance public safety;
 - c. Better address the underlying causes of misdemeanor offenses and recidivism, and
 - d. Save taxpayers money
2. *Support* individualized risk-based assessments and pretrial release with non-financial conditions. To support their argument that this is a viable alternative to cash bail, the federal bail scheme is held up as an example (and seemingly endorsed). Pursuant to the Federal Bail Reform Acts of 1966 and 1984, respectively:

¹ Details on the ruling, and the ruling itself, can be found at <http://www.civilrightscorps.org/historic-victory-in-harris-county-texas>.

² You can review and download all briefs here: <https://university.pretrial.org/viewdocument/fifth-circuit-court-filings-urging>

- a. Judges must release defendants charged with non-capital crimes on personal recognizance or unsecured bond unless there is a separate finding that such release would not “reasonably assure the appearance of the person as required or will endanger the safety of any other person of the community”;
 - b. Only upon such a finding and an individualized assessment of the defendant’s circumstances may the court impose conditions of release, giving priority to non-financial conditions;
 - c. When imposing conditions of release, the judge is to set conditions that will mitigate risk of flight and risk to public safety;
 - d. Where no conditions can reasonably ensure the defendant’s appearance or public safety, preventative detention is permissible only after an individualized hearing, and
 - e. Judges are outright prohibited from imposing a financial condition that results in pretrial detention
3. *Point* to Kentucky and DC as examples of regions where pretrial supervision proved to be an effective alternative to the money bail system that (1) ensured defendants appeared at future court dates, and (2) proved to be more cost-efficient than pretrial detention.
4. *Assert* that maintaining the cash bail system violates the due process and equal protection clauses of the Constitution by allowing for wealth-based discrimination;
5. *Reject* arguments by the bail bond industry (1) that the historical use of bail/it’s being enshrined in the Constitution trumps its violation of equal protection as currently applied, or (2) that commercial bail is more effective at ensuring future appearances than unsecured bonds and pretrial supervision;
6. *Reject* the adoption of “uniform systems” or “categorical rules” for bail determinations, e.g. bail schedules, and consistently express the necessity of individualized determinations.

Why this matters to advocates working on bail reform in New York:

This is among the more visible public positions yet taken by DA Vance in opposition to cash bail and in support of moving to a pretrial detention system based on a finding of dangerousness/public safety criteria, using risk assessment instruments. The use of such instruments is highly controversial in New York and the subject of enormous debate. As advocates confront the complex issues and challenges regarding bail reform in New York, we can expect DA Vance and others to be following the Harris County case closely and to use the case to influence the reform in New York toward a public safety/dangerous framework with the use of risk assessment instruments.

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