**Testimony of The Bronx Defenders**

**New York City Council Committee on Public Safety**

**Hearing Regarding Int. 1000-2015, A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to report seized property data on an annual basis.**

**September 15, 2016**

My name is Adam Shoop and I am a staff attorney in the Civil Action Practice at The Bronx Defenders. I am here today with my colleague, Kenneth Crouch, who is a legal advocate in the Civil Action Practice at our office.

The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, family defense, civil legal services, social work support and advocacy to indigent people of the Bronx. Our staff of nearly 250 represents 32,000 individuals each year and reaches thousands more through outreach programs and community legal education. Among other matters handled by the Civil Action Practice, our civil attorneys and advocates represent many people and families who, as a result of an arrest, also face enmeshed civil penalties such as police confiscation of property and cash.

We submit these comments jointly on behalf of The Bronx Defenders and thank the City Council for its attention to this important issue and for the opportunity to testify.

1. **Property Seizure and the Impact on Our Clients**

Our clients – mainly poor and working poor men, women and youth of color – live in communities in the Bronx that are over-policed and disproportionately represented in the criminal justice system. Time and time again, we legal services practitioners encounter community members who are deprived of valuable property from mere contact with the criminal justice system.

A cornerstone of our criminal justice system is the presumption of innocence. Yet, through New York City’s property retrieval apparatus, this notion is turned on its head. In almost every arrest, regardless of whether a person is ultimately charged with or convicted of a crime, the NYPD takes some form of personal property, including cash, phones, and even cars. The NYPD can take a person’s property during the booking process and continue to hold it for a variety of reasons while the case is pending, and even after the case has concluded. The burden falls on the individual to get their essential property back. They are at the mercy of a complex, opaque series of regulations and bureaucratic obstacles, with little guidance to assist them.

Laws around retrieving property that has been seized by the police, including civil forfeiture laws, are incredibly confusing and complicated, and have been referred to by scholars and federal courts alike as “bizarrely worded” and “byzantine.”[[1]](#footnote-1) Unlike criminal court, there is no right to counsel in property retrieval matters or civil forfeiture proceedings. The overwhelming majority of criminal defendants do not have the assistance of an attorney or other advocate, whether from The Bronx Defenders or elsewhere, making the process even more daunting.

Because this area of the law is complex and confusing even to experts, in the remainder of our testimony we will first explain the multiple legal categories by which the NYPD seize property. Next, we will illustrate the harm this can cause by summarizing a few of our clients’ experiences. Finally, we will present recommendations for modifying the bill so that it would better achieve what we believe is the Council’s goal: providing the public with a clear understanding of the scope of police property confiscation.

1. Property Held for Safekeeping

The purpose of property held by the NYPD for “safekeeping” is simply that: to safeguard a person’s valuable personal property until they are released after their arrest. Theoretically, this is the easiest category of cash or property for a claimant to retrieve. However, in an informal questionnaire given at arraignments to Bronx Defenders’ clients who had money or property taken from them at the time of arrest, nearly half stated that they were never given a property invoice during the booking process, which is required by law. The property invoice, or “voucher,” is essentially a receipt provided by the NYPD and the only physical proof of the seized property after arrest. And the only way to get a copy of the voucher after being released is to go back to the precinct to request it.

Within one to two weeks following an arrest, a person’s property is transferred from the precinct to the NYPD Property Clerk Division. In the Bronx, the office is located in the basement of the Criminal Courthouse. In order to retrieve property from the Property Clerk, a claimant must provide the voucher and two forms of identification, including one government-issued photo ID. Although the NYPD regulations governing this process only require one form of ID if a claimant presents a New York State driver’s license or non-driver ID card,[[2]](#footnote-2) in practice the Property Clerk always requires two forms of ID. (Bronx Property Clerk’s valid identification requirements attached to the Appendix as Exhibit A). Although a social security card and a birth certificate would be sufficient to prove name and date of birth to obtain a New York State photo ID, they are not sufficient to pick up property from the NYPD. Often, the identification people need to retrieve their property is in a wallet or handbag that is among the property they are attempting to retrieve.

If a person lacks the required forms of ID, they have to formally deputize, through a sworn statement to a notary public, a third party to pick up their property who does have the required identity documents. If that authorization contains any misspellings of the claimant’s name or of the authorized individual, it is deemed invalid and must be produced again. If the spelling of the claimant’s name fails to match exactly the name on the property voucher as prepared by the arresting officer, the claimant’s identification or third-party authorization is deemed invalid. If the case number used to identify the property is in any way inaccurate, the third party authorization is deemed invalid. Even something as trivial as stray pen marks on the authorization might result in it being deemed invalid.

The Bronx Property Clerk basement office is the centralized location that processes seized property for the entire county, but it is only open weekdays during business hours and is staffed by only three officers. As a result, claimants seeking to retrieve their property must tolerate the inevitably long lines that form in the course of the day, often taking off time from work to do so. Advocates and attorneys at the Bronx Defenders who are seeking to retrieve our clients’ money and property are forced to schedule large blocks of time, knowing that an hour-and-a-half-long wait is typical, and longer waits are not uncommon. If any of the above problems occur during such a visit, the claimant, third party designee or advocate must start all over, which all too often occurs. In sum, what in theory is straightforward in practice is anything but.

1. Property Held as Arrest Evidence

Property held as “arrest evidence” means that the arresting officer is asserting that the money or property could have evidentiary value in the criminal case and wishes to give the District Attorney’s Office the chance to review whether it is necessary for trial before the property is released to the claimant. In order to retrieve money or property vouchered as arrest evidence, in addition to the requirements above, the claimant also needs to secure a District Attorney’s release from the assigned Assistant District Attorney (“ADA”) authorizing the NYPD to release it.

When a claimant or their attorney makes a request for a DA release for money or property, the ADA has 15 days to issue the release or a written denial stating the reason why. For motor vehicles, an even stricter timeline applies.[[3]](#footnote-3) Under the previous Bronx District Attorney’s administration, our requests were often not responded to within the legally required timeframe, and our telephone calls, e-mails and letters would go unanswered, mostly without legal recourse. However, as a result of ongoing federal litigation brought by The Bronx Defenders, the Bronx District Attorney’s Office under Darcel Clark has agreed to implement a series of reforms to the DA release process and we have agreed to stay our litigation for six months in order to evaluate the success of the reforms.[[4]](#footnote-4)

1. Property Held as Forfeiture

Property held as “forfeiture” is the third most common designation we encounter. In this category, the NYPD is making a claim to keep the property permanently. Other jurisdictions have sought to justify their civil forfeiture laws on the basis that they target multimillionaire drug kingpins. But outgoing Commissioner Bratton has openly advocated confiscating cars and cash even for low level offenses because, in his words, “the criminal justice system no longer provides a disincentive.”[[5]](#footnote-5) He has long praised property seizure and civil forfeiture practices as among “the most effective enforcement techniques” in broken-windows policing—the idea that aggressively policing so-called “quality of life” offenses makes the City safer. In 2015, 249,936 of the 315,760 arrests in New York City (nearly 80 percent) were for misdemeanors or low-level offenses.[[6]](#footnote-6) Like stop and frisk and other broken-windows tactics, property seizures disproportionately affect low-income communities of color, and the consequences are devastating.

The NYPD’s initial designation alone does not mean a claimant cannot ever get their money or property back, but for many people who are arrested, even the temporary loss of cash they may have been carrying to pay their rent, or of a car they use to get to work or take their kids to doctors’ appointments, can be more immediately harmful than their criminal case. One in five New York City residents lives below the federal poverty line, and the Bronx is the poorest urban county in the country, with nearly a third of all Bronx residents living in poverty.[[7]](#footnote-7) The Bronx also has the highest percentage of unbanked and underbanked people in New York City, so our clients are more likely carry their wages in cash.[[8]](#footnote-8)

In order to retrieve property designated as forfeiture, a claimant must secure a release from the Civil Enforcement Unit of the NYPD Legal Bureau in addition to the requirements attached to retrieving property held for safekeeping and arrest evidence. After a person makes a demand with the Property Clerk for return of their property, the NYPD has 25 days under the law to file a forfeiture action or issue a property release.[[9]](#footnote-9) But for the reasons already stated, this process can be troublesome, especially with the added difficulty of negotiating the return of property with the NYPD Legal Bureau.

Currently, a New York City statute provides that all forfeited and unclaimed cash goes to the city’s general fund. This money is then apparently used to offset contributions to the NYPD pension fund. N.Y.C. Admin. Code § 14-140(e); N.Y.C. Admin. Code § 13-203(4) (composition of police pension fund, including: “All moneys received from the property clerk pursuant to sections 14-140 and 10-106 of the code.”)

Client Story # 1:

*About four months ago, NYPD officers stormed into the apartment of Anna and Nate Ortiz, a mother and son who live in the South Bronx. They were looking for a friend of Mr. Ortiz’s who was allegedly in violation of his parole. Police officers ended up arresting the friend for drug possession, but also arrested Mr. Ortiz and another acquaintance who was visiting the apartment. They also took over $2,500 in cash that Ms. Ortiz had saved in the apartment to pay down the rent she had fallen behind on. Mr. Ortiz ended up pleading to disorderly conduct for insisting that the police officers produce a search warrant. The Bronx Defenders filed a demand with the Bronx Property Clerk for Ms. Ortiz’s cash, and left several messages following up with the Civil Enforcement Unit. None of the messages were returned. Over a month later, when the deadline for the NYPD to file a civil forfeiture action had already expired, we belatedly received a letter from the Police Department incorrectly characterizing our demand as improper because it did not contain a District Attorney’s release. However, the RCNY does not require that a DA release be provided at the time a demand is made, only once the property is available for release. After we obtained the DA release, we submitted a new demand, this time directly to the Civil Enforcement Unit. Only two weeks ago, the NYPD finally agreed to release the money as a result of The Bronx Defenders’ multiple inquiries and demands. In July, in the midst of our protracted efforts, Ms. Ortiz was brought to Housing Court and today is still trying to fight off eviction because she can’t pay the back rent. Mere attention to the case’s statutory deadlines could have made all the difference.*

In 1999, the Giuliani administration began applying the Administrative Code to seize and forfeit the cars of people arrested on Driving While Intoxicated charges. Although repeat offenders’ vehicles were already subject to forfeiture under state law, the NYPD began applying the New York City forfeiture law to first time offenders. As conceded by Commissioner Bratton, “most offenders eventually get their cars back under a negotiated settlement which requires them to pay a percentage of the car’s blue book value.” Although our office routinely settles civil forfeiture cases in this manner, it is not without significant hardship to their families who must pay the “settlement fee” to the NYPD and are often without transportation until the vehicle is returned. For some, that means the loss of ability to earn a livelihood and other far-reaching consequences.

Client Story # 2:

*Richard Aguilar, who was the sole caregiver to his two daughters since his wife passed away from cancer in 2008, had his car seized for misdemeanor DWI in his first ever arrest. Although he pled guilty to a traffic violation and paid $300 in criminal court, his vehicle was impounded for months while he resolved his civil forfeiture case. During that time, Mr. Aguilar lost his job because he could not get to work, faced eviction in housing court due to rent arrears, and received a utility shut off notice. As a standard term of NYPD settlements, he was evaluated by an Office of Alcohol and Substance Abuse Services provider and determined not to need any type of treatment. But despite never being convicted of a crime and having already paid a $300 fine, the NYPD was resolutely only offering to settle his civil forfeiture case for $500, which was only reduced to $200 after extensive negotiations by our office.*

Client Story #3:

*Jonathan Rodriguez was stopped in his weathered 1996 Mercury Grand Marquis in late 2014, and charged with a misdemeanor DWI. This was a vehicle that, despite its age and condition, he depended upon to visit family in Pennsylvania and complete daily tasks in the Bronx. After the NYPD seized it, they did offer Mr. Rodriguez a settlement in lieu of civil forfeiture. However, not only did the offer to avoid civil litigation equal the value of the vehicle, the paperwork was sent to his mother’s residence in Pennsylvania. Mr. Rodriguez had to borrow a vehicle from a friend and drive to Pennsylvania to get a duplicate title showing proof of ownership, and the NYPD only relented in its pursuit of the car when the charges were eventually dismissed in February 2015. Mr. Rodriguez was deprived of his vehicle while his case was pending and for two months after its dismissal.*

1. Property Held as Investigatory Evidence

Property held as “investigatory evidence” is distinguished from the earlier three categories in which the property is seized either at the time of an arrest or where an arrest is later made. This property has been seized only in connection with an ongoing investigation. However, the NYPD has also continued to hold property on the basis of an ongoing investigation even when an arrest has been made, but the District Attorney’s Office declined or deferred prosecution. There are no specific laws or regulations governing how or when a claimant can retrieve property held for investigative purposes, only that the claimant must “obtain a release from the investigating officer, in writing, usually on department letterhead.”[[10]](#footnote-10) According to the NYPD, an investigating officer need only obtain permission to continue to hold property for an investigation after one year has elapsed. (Sample NYPD Property Clerk Investigatory Evidence Invoice attached to the Appendix as Exhibit B).

Client Story #4

*Michael Dixon was pulled over while riding his twelve-year-old Chevy Suburban on Labor Day 2014. He was told that his vehicle matched the description of a vehicle leaving the scene of a crime; he was handcuffed and taken to the precinct. At the precinct he was interrogated for seven hours but he maintained that he did not know anything about the crime they were investigating. He was eventually released without being charged and drove home. Several weeks later, he woke up to find that his vehicle was gone from where he had parked it. He called the police to report it stolen and was told that the NYPD had seized his car and were waiting to speak to him. He was interrogated again and told that they would violate his probation for being uncooperative. When he was released that day, he was not able to leave with his vehicle. He went back to the precinct several more times to inquire about how he could get his vehicle back. Eventually he was given a property voucher but his vehicle was still not released. After Mr. Dixon came to The Bronx Defenders several months later, we intervened on his behalf and made inquiries about the vehicle with the NYPD Civil Enforcement Unit. Without explanation, we were told that the vehicle was no longer being held for investigation and that Mr. Dixon could pick it up from the auto pound. During each of the six months he was without his Suburban, Mr. Dixon still owed approximately $250/month to the bank on his finance agreement for the vehicle.*

1. **The Need for Transparency on NYPD Property Seizure**

The need for transparency is critical to re-evaluating the purpose and effect of these police practices and whether they serve important public policy goals. Other than a single line item on its budget for “unclaimed cash and property sale,” the NYPD does not publicly account for how much seized money and property is taken, how much is returned, or how the money and property it keeps is spent or allocated. The budget line item for unclaimed cash and property sale totaled $6.5 million in 2014 and more than $7 million 2015.[[11]](#footnote-11)

In July 2014, The Bronx Defenders served the NYPD with a Freedom of Information Law (“FOIL”) request seeking records pertaining to NYPD policies and procedures pertaining to property seized from people at the time of an arrest and documents accounting for the value of money and property seized, whether it’s returned or kept, and how any such money and resources kept are spent or allocated.

Nineteen months later, after numerous extensions and delays, the NYPD responded to the request with a paltry 14 pages of accounting records from 2013 and an electronic copy of the NYPD Patrol Guide, which is largely irrelevant to the request. The 2013 records show that the NYPD held over $68 million in any given month in 2013 and confirmed that the NYPD generated over $6 million in property seized that year. (The 2013 Accounting Summary is attached to the Appendix as Exhibit C and the 2013 Revenue Generated Report is attached to the Appendix as Exhibit D). But the documents also revealed less than half a million of that money was obtained through civil forfeiture cases that the NYPD affirmatively filed in court, while over $5 million appears to be revenue generated from “unclaimed” cash, and another half million through auctions and fees. (Ex. D).

Last month, The Bronx Defenders filed a lawsuit asking the Supreme Court of the State of New York to order the NYPD to comply with its legal obligation to disclose the information we requested.[[12]](#footnote-12) (Article 78 Petition attached as Exhibit E). The NYPD requested an extension to respond. To date, no further documents have been produced.

1. **Recommendations to Strengthen the Legislation**

This bill begins to provide transparency on this important issue, and we thank Council Member Torres, the bill’s 36 other co-sponsors, and this Committee for their leadership. We note that the bill does not effect any substantive change at all. It merely requires reporting, so the Council and public might consider, from a fully informed perspective, whether further reform may be warranted. Even in this modest context, however, this bill could be strengthened by making the following changes:

1. **Comprehensively track the NYPD’s seizure of money and vehicles in connection with an arrest or investigation**. The current bill only tracks money held for safekeeping and arrest evidence. The categories should also include money designated for forfeiture and also for investigatory evidence. Similarly, the bill only tracks vehicles held for safekeeping, arrest evidence and investigatory evidence, but not forfeiture. As the bill already provides, we agree that all of this information should be disaggregated by borough and police precinct.
2. **Specify that the reporting should be non-duplicative**. Money and vehicles can be held for more than reason; for example, as both arrest evidence and for forfeiture. They should only be counted in one category so the Council and public will have an accurate understanding of how much property is seized each year.
3. **Report the disposition of all money and vehicles, not just vehicles returned to claimants or kept by the NYPD through civil forfeiture**. Currently, the bill does not require the NYPD to report the value of so-called “unclaimed” cash or vehicles it permanently keeps without settling or winning a civil forfeiture action. In other words, the bill would not show the final outcome of how all cash and vehicles are disposed of. For each borough and precinct, the NYPD should annually report, disaggregated by safekeeping, arrest evidence, forfeiture and investigatory evidence: (a) how much money and the number of vehicles seized; (b) how much money and the number of vehicles returned to claimants; (c) how much money and the number of vehicles kept by the NYPD after settling or winning a civil forfeiture action; (d) how much money and the number of vehicles kept by the NYPD which will never be returned claimants and are counted as revenue for the NYPD.
4. **Report the total number of claimants who retrieved their money and property in each category and the average length of time it took for their money and vehicles to be returned**. For each borough and precinct – disaggregated by safekeeping, arrest evidence, forfeiture, and investigatory evidence – the NYPD should include the total number of claimants who had money or vehicles returned, disaggregated as follows: (a) total number of claimants who received their money in 6 months or less; (b) between 6 months to one year, (c) between one and two years; (d) two to three years; (e) three years or longer. The same should be reported for claimants who retrieved their vehicles.
5. **Expand the reporting to include span of time and point in time data**. Currently the bill only tracks the amount of money, vehicles and other property held by the NYPD and the amount of money and vehicles returned to claimants each year. The bill should track (a) the value of money, the number of vehicles, and other property the NYPD seized each calendar year; (b) the value of money, the number of vehicles, and other property disposed of each calendar year (either returned to claimants or determined to be kept by the NYPD); and (c) a point-in-time summary of all money, vehicles, and other property being held on December 31 of the calendar year being reported on.
6. **For the other types of reported property, the NYPD should indicate how many items were returned**. The bill currently would require the NYPD to report on the number of other commonly seized items such as smartphones, wallets, and the like. In addition to the number seized, the NYPD should report the number of each of those items returned to a claimant.

We would be grateful for the opportunity to work with Council staff to develop language effecting these recommended changes.

Again, thank you for the Council’s attention to this important area and for the opportunity to present these comments.

1. 2-16 David B. Smith, Prosecution and Defense of Forfeiture Cases ¶ 16.04 (Matthew Bender 2014) (“a bizarrely worded provision”); *Ford Motor Credit Co. v. N.Y.C. Police Dep’t*, 503 F.3d 186, 189 n.5 (2d Cir. 2007) (“byzantine statutory scheme”). [↑](#footnote-ref-1)
2. 38 R.C.N.Y. § 12-Appendix A (proper identification). [↑](#footnote-ref-2)
3. *See Krimstock v. Kelly*, 99 Civ. 12041 (HB) (S.D.N.Y. Oct. 1, 2007) (Third Amended Order). *See also* Int. 1272-2106 (proposing to amend the Administrative Code to codify the *Krimstock* order). [↑](#footnote-ref-3)
4. *Encarnacion v. City of New York*, 16 Civ. 156 (DLC) (S.D.N.Y.) [↑](#footnote-ref-4)
5. William J. Bratton, *The New York City Police Department’s Civil Enforcement of Quality-of-Life Crimes*, 3 J.L. & Pol’y 447 (1995). [↑](#footnote-ref-5)
6. Criminal Court of the City of New York, Annual Report 25 (2015), *available at* <https://www.nycourts.gov/COURTS/nyc/criminal/2015_crim_crt_ann_rpt_%20062316_fnl2.pdf> [↑](#footnote-ref-6)
7. Sam Roberts, *As Effects of Recession Linger, Growth in City’s Poverty Rate Outpaces the Nation’s*, N.Y. Times, Sept. 22, 2011, at A23, available at <http://nyti.ms/19wMQE4> [↑](#footnote-ref-7)
8. Urban Institute, Where are the Unbanked and Underbanked in New York City (Sept. 2015), *available at* <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000430-Where-Are-the-Unbanked-and-Underbanked-in-New-York-City.pdf> [↑](#footnote-ref-8)
9. *McClendon v. Rosetti*, 70 Civ. 3851, at ¶ 7(a) (MEL) (S.D.N.Y. Mar. 23, 1994) (Final Order). [↑](#footnote-ref-9)
10. 38 R.C.N.Y. § 12-06. The Federal Court that mandated the current regulations governing property retrieval explicitly exempted investigatory property from its rules, which apply only to property seized in connection with an arrest. *McClendon v. Rosetti*, 70 Civ. 3851 (MEL), 1993 WL 158525 (S.D.N.Y. May 12, 1993). [↑](#footnote-ref-10)
11. City Council of New York, Report on the Fiscal 2017 Preliminary Budget and the Fiscal 2016 Preliminary Mayor’s Management Report New York Police Department 13 (Mar. 21, 2016), *available at* <http://council.nyc.gov/html/budget/2017/pre/056%20NYPD.pdf> [↑](#footnote-ref-11)
12. *The Bronx Defenders v. NYPD*, 156520/2016 (Sup. Ct., N.Y. Co.) [↑](#footnote-ref-12)