NYC Commission on Human Rights

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Testimony of Dana Sussman
Deputy Commissioner for Policy and Intergovernmental Affairs
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights
January 22, 2020

Good morning Chair Eugene and Members of the Committee on Civil and Human Rights. Thank you for convening today's hearing on Intro. 1314-A. I am Dana Sussman, Deputy Commissioner for Policy and Intergovernmental Affairs at the New York City Commission on Human Rights. The Commission is proud to enforce one of the broadest and most protective laws prohibiting discrimination on the basis of one's involvement in the criminal legal system, the Fair Chance Act, and we are excited to be here today to discuss Intro. 1314-A which would expand protections in meaningful and important ways for people currently employed or seeking employment and who have prior or current engagement with the criminal legal system. We think Intro. 1314-A is vital to continuing this important work and we strongly support the bill.

The Fair Chance Act was signed into law in June 2015 and went into effect in October 2015. It was the first substantive change to the NYC Human Rights Law under Commissioner Carmelyn P. Malalis's tenure, and a groundbreaking shift in how employers must advertise, interview, and consider candidates for employment. By "banning the box," which refers to removing the box an applicant is required to check on a job application indicating whether they have a criminal record, prohibiting the use of criminal background checks until a conditional offer is made, and then providing a standard, notice, and process for withdrawing the conditional offer under limited circumstances, it gives people with criminal history access to employment in ways that had long been out of reach. And the implementation of New York City's Fair Chance Act ("FCA") provides a case study in how the Commission, under Commissioner Malalis's leadership, undertook a comprehensive and multi-pronged approach that involved policy development and rulemaking, education and outreach, a public awareness campaign, and aggressive enforcement, including case resolutions that incorporate restorative justice principles.

Leading up to the Fair Chance Act's effective date, the Commission published its second legal enforcement guidance, which provides clear and transparent information and examples as to how the Commission will enforce the Fair Chance Act's protections, enumerating specific *per se* violations of the FCA, and publishing a template notice form for employers to use to share with applicants when undertaking the Fair Chance analysis. In addition, the Commission published fact sheets, a multi-lingual pamphlet, and frequently asked questions on its website that are responsive to questions the Commission received from members of the public and employers. In 2017, the Commission, after notice and comment, promulgated rules codifying most of the legal enforcement guidance. The Fair Chance Act rules also established a new Early Resolution process, in which the Commission's Law Enforcement Bureau, in its discretion, can issue fines pursuant to a prescribed penalty schedule, in an expedited manner, where per se violations of the FCA are identified. This has allowed the Commission to manage its resources and build in efficiencies so that the Commission can focus its efforts on high impact cases. The rules went into effect August 5, 2017.

To educate the public on this major expansion of legal protections, the Commission developed two FCA-focused workshops (which also cover prohibitions on obtaining and using applicants' credit history during the hiring process) for two different audiences: employers, to understand their obligations, learn where to find resources, and obtain clear information on how to properly engage in the Fair Chance process; and one workshop for job applicants, workers, and service providers who work with people with criminal legal involvement, to understand their rights, how to report to the Commission, and what remedies are available to them. The Commission offered these workshops to community-based organizations, business associations, houses of worship, and to sister agencies. The Commission also hosted these free workshops at its five borough-based offices monthly or quarterly during the first three years after the law went into effect and continue to offer them.

Since 2015, the Commission has provided 1,148 trainings on the Fair Chance Act across all five boroughs, including 510 trainings on Rikers, over 50 additional trainings in partnership with the Department of Corrections, Probation, and NYCHA, and over 100 trainings to NYS Department of Correction and NYS Division of Parole. In total, the Commission has provided in-person live training to over 44,000 New Yorkers on the Fair Chance Act since its passage in 2015. The Commission has also prioritized outreach and education to business entities to ensure they have the information and tools they need to comply with the Fair Chance Act and other requirements under the City Human Rights Law. For example, the Commission has presented on the Fair Chance Act to the Brooklyn Chamber of Commerce, the Richmond County Black & Minority Chamber of Commerce, the United Neighborhoods Civic Association, and the Bucks Business Network on Staten Island. The Commission has also presented regularly to the management bar, law firms that counsel large employers on compliance, and to various bar associations on this law and others. In addition, the Commission has educated millions of New Yorkers on their rights and obligations under the Fair Chance Act through a robust public outreach campaign that launched in late 2015 and included multilingual ads in subways, online, in newspapers, and on ethnic and community radio stations.

The Commission's Law Enforcement Bureau has aggressively enforced the Fair Chance Act using a variety of investigatory tools and methods for maximum impact. Since 2015, the Commission has filed 456 complaints of criminal history discrimination, and as of earlier this month, currently has 174 open matters related to the Fair Chance Act. The Commission has conducted a total of 832 tests related to the Fair Chance Act and filed a total of 69 Commission-initiated complaints that were a result from testing.

The Commission's Law Enforcement Bureau has resolved cases with large employers, including, for example, CityMD, Yelp, Mount Sinai Medical Systems, and CVS, ensuring maximum impact for New Yorkers, and in some instances, has even negotiated resolutions that include a commitment to "ban the box" nationwide, beyond what employers are legally obligated to do. In addition to major policy changes, trainings, and other affirmative relief, the Commission has ordered a total of $1,055,610.00 in damages and penalties since 2015, representing $698,610 in damages to complainants that have been harmed by violations of the FCA and $357,000 in civil penalties to the general fund of the City of New York. In other cases, the Commission, in its discretion, has not levied any penalties at all, where an employer agrees to take immediate action to correct a violation, undergo training, and come into compliance. A few

case summaries highlight the Law Enforcement Bureau's dedicated efforts to ensure widespread change, relief for victims of discrimination, and restoration for communities impacted by these practices.

In a case in which an individual sought a job as a custodian, he identified that the application contained illegal questions about criminal history, and he was unlawfully interrogated about his criminal history during his interview. Afterwards, the complainant did not receive an offer for the position, and he filed a complaint with the Commission alleging criminal history discrimination and violations of the Fair Chance Act. To resolve the case, Respondent agreed to bring its employment policies in line with the New York City Human Rights Law, train the company's managers; partner with certain reentry organizations to include their clients who have criminal histories in the job applicant pool; pay the complainant $35,000 in emotional distress damages and $7,000 in back pay, and pay a $20,000 civil penalty to the general fund of the City of New York.

In another case, an applicant for employment with Yelp, Inc. filed a complaint, alleging that the company made an unlawful pre-employment inquiry about his criminal conviction history in violation of the Fair Chance Act and denied him employment based on his criminal conviction record. The Commission's Law Enforcement Bureau conducted an investigation and audited Yelp, Inc.'s employment policies. They also found that Yelp, Inc. had unlawfully run a background check on the complainant prior to making him a conditional offer of employment and had unlawfully denied him employment because of a two-year-old misdemeanor conviction. Yelp, Inc., the complainant, and the Commission entered into a conciliation agreement requiring the company to pay $20,000 in emotional distress damages to the complainant, a $10,000 civil penalty to the general fund of the City of New York, and engage in extensive affirmative relief, including: training 800+ New York City-based employees on the New York City Human Rights Law, including the Fair Chance Act; formally committing to ban the box at all of its offices nationwide; displaying the Commission's Notice of Rights and Fair Chance Act posters at conspicuous locations accessible to all New York City-based employees; and revising and updating its internal policies regarding applicants with criminal conviction records. In particular, in an unprecedented move beyond the protections of the existing law, Yelp agreed to disregard entire classes of convictions and convictions over a certain number of years old.

I will turn it over to my colleague, Zoey Chenitz, Senior Policy Counsel, to discuss the key changes to the Fair Chance Act that Intro. 1314-A would codify. Thank you for convening today's hearing to discuss this incredibly important bill. The Commission is dedicated to using all of the tools at our disposal to ensure that the Fair Chance Act fulfills its promise to reduce barriers to employment for people with involvement in the criminal legal system, and we hope to soon incorporate the additional protections afforded by Intro. 1314-A into the agency's work and mandate.

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Testimony of Zoey Chenitz
Senior Policy Counsel
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights
January 22, 2020

Good morning Chair Eugene and Members of the Committee on Civil and Human Rights. Thank you for convening today's hearing on Intro. 1314-A. I am Zoey Chenitz, Senior Policy Counsel at the New York City Commission on Human Rights. As my colleague Dana Sussman highlighted in her testimony, New York City's Fair Chance Act has been a leading model across the nation in terms of promoting fair employment opportunities for people impacted by the criminal legal system, ensuring they have an opportunity to obtain employment based on their merit and qualifications, support themselves and their families, and contribute meaningfully to their communities.

The Commission strongly supports Intro. 1314-A, which will strengthen the Fair Chance Act in several important ways. I would like to focus on four key changes that the bill will make to the New York City Human Rights Law. First, the bill provides new procedural protections for job applicants and current employees with pending criminal cases, meaning that employers may not arbitrarily take adverse action, such as denying or terminating employment, because of an arrest or open criminal case, without first considering several factors related to whether the alleged wrongdoing is related to the job or would pose an unreasonable risk to people or property. This important change ensures that people who have <u>not</u> been convicted of a crime, and are presumed innocent under the law, will receive similar employment protections to those already available for someone convicted of a crime.

Specifically, the bill requires that before an employer takes an adverse action against an applicant or employee based on a pending case they must first request information from the person and consider six "relevant fair chance factors," similar to those outlined in Article 23-A, Section 753 of the Correction Law. The differences from Article 23-A reflect the fact that, unlike old convictions which may have occurred in the distant past, pending cases concern current interactions with the criminal system. With respect to pending cases, the relevant fair chance factors would include: (1) the City's policy objective of overcoming stigma toward and unnecessary exclusion of people with criminal justice involvement from licensing and employment; (2) the specific duties and responsibilities related to the person's employment; (3) the bearing of the alleged criminal offense on the person's fitness or ability to perform the duties and responsibilities of the job; (4) the seriousness of the alleged offense; (5) the legitimate interest of the employer in protecting property and the safety and welfare of specific people or the general public; and (6) if the person is a current employee, any additional information they can provide of rehabilitation or good conduct, including their history of positive job performance.

Taking into account all of the relevant fair chance factors that I have just listed, the employer could take an adverse action only if they determine that there is a direct relationship between the job and the wrongdoing alleged in the pending case, or that granting or continuing the person's employment would involve an unreasonable risk to property or to the safety or

welfare of specific people or the general public. As with the fair chance process that is already applicable to convictions, the employer will have to provide the applicant or employee with a copy of the criminal history information relied on by the employer and a written copy of the employer's analysis of the relevant fair chance factors and then give the person time to respond, for example with information about errors in the criminal history, faults in the employer's analysis, or with mitigating information.

As with the existing protections for criminal history under the Fair Chance Act, these new protections based on pending cases would not apply to police officers, peace officers or other positions at law enforcement agencies, or where the law imposes a mandatory forfeiture, disability, or bar to employment. In addition, the new protections for pending cases would not apply to public employees who are already eligible for procedural protections against arbitrary dismissals pursuant to Section 75 of the Civil Service Law or pursuant to agency rules or other law. The minority of public employees who are not eligible for such alternative protections, and the majority of employees working in the private sector, will gain protection under this proposed amendment to the Fair Chance Act.

In the absence of employment protections for pending criminal cases, legally innocent people with pending criminal cases enjoy, paradoxically, less robust employment protections than people who have been convicted. As a result, people who wish to fight the criminal charges against them may risk greater job uncertainty while their case is open than they would if they plead guilty to quickly resolve their case. This bill would protect the rights of the accused and would help to mitigate collateral employment consequences, particularly for people of color and lesbian, gay, bisexual, transgender, and queer ("LGBTQ") people who are disproportionately impacted by the criminal legal system.

Second, the bill would add protections for employees impacted by the criminal system during their employment. Currently, the Fair Chance Act only protects current employees from adverse action based on convictions that occurred prior to the start of their employment. Under the proposed amendment, current employees would also have protections against adverse actions based on a pending case, as I described earlier, or a conviction that occurs during employment. As with convictions pre-dating employment, employers would have to engage in an analysis similar to that which I described earlier. In short, an employer could take an adverse action only after considering the relevant fair chance factors and determining either that there is a direct relationship between the alleged or convicted conduct and the job, or that continued employement would involve an unreasonable risk to the safety or welfare of people or property. The employer would also be required to provide the employee with a written copy of its fair chance analysis, along with the criminal history information on which the analysis was based, and give the employee a reasonable time to respond. The employer would be permitted to place the employee on unpaid leave while it conducts the fair chance process.

Consistent with existing exceptions to the Fair Chance Act, the bill's protections for current employees would not apply for police officers, peace officers, or other employees of law enforcement agencies, or to positions designated as exempt from the fair chance process by the Department for Citywide Administrative Services (DCAS). In addition, as I noted earlier, protections for pending cases would not apply where the employee is otherwise protected under Civil Service Law Section 75, agency rules, or another law. These procedural protections are important because they will prevent an arrest from automatically causing job loss, while still protecting the legitimate business interests of employers.

Third, the bill would prohibit employers from considering violations and non-criminal convictions that are unsealed. Currently, employers are prohibited from asking about or taking any adverse action based on violations or non-criminal convictions that have been sealed, a process that happens automatically after a period of time for most violations. However, there is no protection for workers with such adjudications during the period prior to sealing, which typically lasts between six months and one year, or if the violation is not subject to sealing, as is the case for the violation of loitering for purposes of prostitution. In short, a loophole in the current law means that people whose criminal outcomes are deemed so inconsequential that they may not be considered at all once they are sealed have no employment protections before they seal. Intro. 1314-A would close the existing loophole, ensuring minor contact with the criminal legal system does not hinder the ability to seek and keep employment. This amendment will be particularly impactful for people convicted of loitering for purposes of prostitution – a violation that critics have referred to as "walking while transgender"[1] because of the frequency with which it is used to disproportionately police transgender women of color, often criminalizing ordinary conduct such as standing on a street corner with one's friends. By adding employment protections for unsealed violations, which includes all convictions for loitering for purposes of prostitituion, this bill will help to reduce the collateral consequences of this outdated offense. The bill will provide similar new protections in the area of licensing, with respect to unsealed violations, non-criminal offenses, and the underlying arrests that result in such outcomes.

Fourth, the bill will provide procedural protections if an employer seeks to take adverse action based on perceived misrepresentations about a person's criminal history. Currently, if there is any perceived conflict between a person's self-report of their criminal history and a background check, the employer can take adverse action without any further input or clarification from the person. That is troubling because background checks often include inaccurate or outdated information.[2] In addition, employers may use insignificant conflicts between what a person has represented and what appears on their record as a pretextual basis to reject them from a job. This bill would require that before an employer takes adverse action based on a perceived misrepresentation, they first provide the person with the information that they believe demonstrates the misrepresentation and provide the person a reasonable time to respond. In other words, the bill will enable people to explain their situation before an employer unilaterally takes an adverse action based on their belief that an applicant has lied about their criminal history. This change will be particularly helpful to people with old and minor convictions, who may be less likely to remember them.

For all the reasons I have discussed, the Commission strongly supports Intro. 1314-A and we encourage the Council to move forward with its passage. We are grateful to the Public Advocate for sponsoring this legislation and to the Council for taking up the issue. I look forward to your questions.

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[1] *See, e.g.*, Emma Whitford, *NYPD amends patrol guide to curb 'walking while trans' arrests*, QUEENS DAILY EAGLE (June 6, 2019), https://queenseagle.com/all/loitering-law-transwomen-nypd-amended-profiling; German Lopez, *"Walking while trans": How transgender women of color are profiled*, VOX (Jul. 21, 2015), https://www.vox.com/2015/7/21/9010093/walking-while-transgender.

[2] *See generally* Nat'l Consumer Law Center, *Broken Records Redux: How Errors By Criminal Background Check Companies Continue To Harm Consumers Seeking Jobs And Housing* (Dec. 2019), https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf.

PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS TO THE COMMITTEE ON CIVIL AND HUMAN RIGHTS ON INTRO-1314, THE FAIR CHANCE ACT 2.0

JANUARY 22, 2020

Good morning, my name is Jumaane D. Williams and I am the Public Advocate for the City of New York. I want to thank Chair Mathieu Eugene and the Committee on Civil and Human Rights for holding this hearing on the extending employment protections for individuals with criminal records through the passage of the Fair Chance Act 2.0

For the one in three Americans who have criminal and arrest records, employment opportunities may be significantly diminished as employers have historically discriminated against individuals who are justice involved. This is especially true for individuals of more color who have been the victims of mass incarceration and overcriminalization. To address this disparity, I worked with the City Council to pass the nation's strongest "Ban the Box" policy to ensure that New Yorkers with an arrest or conviction record would have an equal opportunity to compete for jobs. The Fair Chance Act makes it illegal for most employers to ask about your criminal record until the end of the hiring process at which point an employer can only revoke your employment offer if your previous conviction has a direct connection to the job duties. If an employer rescind a job offer based off an applicant's criminal history, the employer must provide a written explanation of their decision alongside a copy of the applicant's record. This legislation has decreased employment discrimination and created new opportunities for those who have criminal records.

It has been five years since the passage of the Fair Chance Act, and it is time we expand the protections we provide to individuals with criminal records by closing some loopholes. Currnently, banning the box does not protect individuals who have pending adjournments in contemplation of dismissal (ACDs), non-pending arrests and criminal accuations, or unsealed violations such as loitering for the purposes of prostitution. If convicted, an individual will have this charge on their criminal record until it's sealed, restricting their employability over the duration. Sealed violations cannot be viewed under the current law, while the unsealed violations can appear on a background check and affect one's ability to gain employment.

One of the critical components of this legislation is the prohibiting discrimination against current employees or applicants who have violations related to loitering for the purposes of prostitution. In passing this bill, more overcriminalized groups such as sex workers, indviduals identifying as transgender and gender non-conforming, and persons of more color will be further protected from discriminatory employment practices.

The Fair Chance Act 2.0 also prohibits the aforementioned violations and criminal charges from being considered during the hiring process, and it extends protections from the original Fair Chance Act to individuals who are currently employed. This bill also clarifies what factors employers can consider when reviewing pending criminal charges, and it reduces barriers for justice involved individuals seeking licenses or permits.

Even though New York City law restricts discriminsation based on a criminal record, background investigations are routinely conducted prior to an offer of employment and employers reject applicants based on if charges from an arrest are still pending. These employers are increasingly violating federal, state, and city laws and illegally discriminating against qualified applicants. Employers and private information vendors have dispersed more than $325 million to settle related litigation over the past decade. In New York City, the Commission on Human Rights has filed 520 complaints against employers who violate the Fair Chance Act resulting in $789,734 in damages and fines. This bill strengthens the cases against employers who violate the Fair Chance Act.

As with the Fair Chance Act, this bill will not hurt employers and does not require them to hire any particular applicant. Rather, it makes it possible for applicants to have the opportunity to be evaluated for a job based on their qualifications and experience instead of their criminal records.

I urge members of the Committee to extend the reach of the Fair Chance Act for those seeking employment in New York City. Let's reduce barriers for justice-involved individuals and create more equitable employment opportunities for those with criminal records. Thank you for your time and consideration.

youthrepresent

JUSTICE FROM COURTROOM TO COMMUNITY

Written Comments of Eric Eingold, Youth Represent
Before the New York City Council
Committee on Civil and Human Rights
RE: Amendments to the New York City Human Rights Law, namely, the Fair Chance Act
Intro 1314-A
January 22, 2020

Good morning, my name is Eric Eingold and I am a Staff Attorney at Youth Represent. Thank you to Public Advocate Williams; Council Members Adams and Lancman; Chair Eugene; and the Committee members and staff for the opportunity to testify today.

Youth Represent provides holistic re-entry legal services for court-involved youth. Our mission is to ensure that young people affected by the criminal justice system are afforded every opportunity to reclaim lives of dignity, self-fulfillment, and engagement in their communities. We provide criminal and civil reentry legal representation to young people age 24 and under who are involved in the criminal justice system or who are experiencing legal problems because of past involvement in the criminal justice system. We also engage in policy advocacy and train the next generation of leaders through our Youth Speakers Institute. Our interdisciplinary approach allows us to understand the full extent of our clients' legal and practical challenges so we can effectively represent them as they make the journey from courtroom to community.

Since we opened our doors in 2007, Youth Represent has fought to protect the rights of our clients when they face employment discrimination on the basis of their criminal records. Our clients are overwhelmingly people of color. They come from communities that are overpoliced and, as a result, overrepresented in the criminal justice system. In 2017, I was awarded an Equal Justice Works Fellowship focused on enforcing the Fair Chance Act "(FCA"). Over the past three years, Youth Represent has filed multiple federal class action lawsuits to enforce protections against criminal record-based discrimination defined in the FCA and Article 23-A of the New York State Correction Law. In *Kelly v. Brooklyn Events Center, LLC et al.*,[1] we represent a class of people denied jobs at the Barclays Center on the basis of their criminal convictions. In *Millien v. Madison Square Garden Co.*,[2] we challenged Madison Square Garden's policy of denying employment to job applicants whose criminal record disclosures did not fully match the information that appeared on the company's background checks. We are litigating other individual and class action cases, including *The Fortune Society, Inc. v. Macy's, Inc.*[3], which also asserts FCA and Article 23-A claims.

We are thrilled that this Committee is considering legislation to strengthen the FCA. Since becoming law, the FCA has helped many of our clients avoid the immediate stigma that used to attach to them as a result of having been required to disclose their criminal record on job applications. Armed with the knowledge that their criminal record will not be one of the first

[1] No. 17 Civ. 4600 (E.D.N.Y.).
[2] No. 17 Civ. 4000 (S.D.N.Y.).
[3] No. 19 Civ. 5961 (S.D.N.Y.).

things an employer learns about them, our clients are applying for jobs and are getting hired. From an attorney's perspective, the requirement that an employer must share its analysis of the applicant's fit for the position pursuant to the factors contained in Section 753 of the Correction Law ("Article 23-A factors") allows us to help our clients prepare responses to the employer's specific concern and provides us with real-time proof of whether the employer adequately considered the Article 23-A factors.

The legislation before the Council today takes tremendous steps towards addressing gaps that currently exist in the New York City Human Rights Law ("NYCHRL"). If passed, these reforms will help thousands more New Yorkers find and keep jobs during periods of intense stress and instability that accompany an arrest. Fundamentally, the proposed legislation expands protections for New Yorkers who are currently being discriminated against solely on the basis of having been accused of a crime. We commend the Council for taking on this issue and strongly support Intro 1314-A with a few reservations and technical suggestions detailed in this testimony.

Protecting New Yorkers with Open, Pending Criminal Cases

"Innocent until proven guilty" is one of the best-known tenets of the American criminal justice system. Yet our employment discrimination laws fail to adequately protect people who have only been accused of violating the law but are not yet found guilty. This year, a Youth Represent client who I'll call Kent applied for and was hired for a job at a large retail store in Brooklyn. Before applying, Kent was arrested and given a desk appearance ticket after he was caught turnstile jumping because he did not have $2.75 for subway fare. He was charged with theft of services, PL 165.15, a charge that is nearly universally brought against Black and Latinx New Yorkers.[4] Kent disclosed his open case during his onboarding, but, because his case was not disposed of when he applied, his prospective employer was able to revoke Kent's job offer on the basis of his open, pending case.

In 2018, there were 214,852 cases that received dispositions in criminal proceedings in New York City.[5] Only 91,090—42.4%[6]—of those cases resulted in a criminal conviction. Currently, the law provides virtually no protections to a person applying for work in New York City that has an open case against them even though that has yet to be proven and has a less than 50% chance of ending in a criminal conviction. Thanks to the amendments to the New York State Human Rights Law passed by the New York State legislature in 2019[7], a person can no longer be denied a job if their case is adjourned in contemplation of dismissal. This was a tremendous step forward, butt offers no protection to a person in Kent's situation. In Kent's

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[4] In 2017, there were 18,403 arrests in New York City for theft of services. Of those arrests, 32.3% of people arrested for theft of services were Latinx, 57.1% were Black, and 7.8% were white. Spreadsheet produced by New York State Division of Criminal Justice Services, NYC PL 165.15 Arrests 2014 to 2017 (as of June 22, 2018) (on file with Youth Represent).

[5] CRIMINAL JUSTICE STATISTICS, DIVISION OF CRIMINAL JUSTICE SERVICES, 2014-2018 DISPOSITIONS OF ADULT ARRESTS, NEW YORK CITY https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf (last visited January 21, 2020).

[6] *Id.*

[7] *See* N.Y. Exec. Law § 296(16).

case, the presumption of innocence he was entitled to was a mere illusion. A person applying for a job with an open case may decide that they have a better chance of getting hired by pleading guilty to a violation in order to dispose of the case as quickly as possible.

This must change. The City must protect New Yorkers from discrimination merely because they have been accused of a crime. Failing to do so falls short of upholding that fundamental idea that a person is innocent until proven guilty. We strongly support Intro 1314-A, which will protect New Yorkers from being denied jobs only on the basis of having an open, pending arrest.

Relevant Fair Chance Factors

It is crucial that the City Council specify factors an employer must consider when analyzing an applicant's or current employee's pending arrest. The proposed amendments before the Council do that and we support that effort. However, we have two concerns about relevant fair chance factor (f), namely the amendment's language that permits a current employee to share evidence "in regards to their rehabilitation." A person who has only been accused of a crime is presumed innocent. Accordingly, a person ought not to have to show rehabilitation from a mere allegation. We believe the rest of the language in relevant fair chance factor (f), specifically a person's good conduct and history of positive work performance, will allow an employee to engage in a productive dialogue with an employer while retaining the employee's presumption of innocence.

We also propose that the Council add a factor that accounts for an individual's age at the time of the activity that gave rise to an arrest. Age is a mitigating factor for a young person accused of a crime. It is treated as a mitigating factor for people with criminal convictions in Article 23-A. We propose that it continue to be treated as such under the proposed expanded fair chance protections.

Intentional Misrepresentation

A Youth Represent client, who I'll call Jessica, struggled with drug addiction in her late adolescence. While she was still a teenager, Jessica was convicted of a drug offense and served time in prison. A few years later, Jessica was arrested again and charged with a class B misdemeanor for marijuana possession. Due to Jessica's felony conviction, the prosecutor in her marijuana possession case was unwilling to negotiate a plea. Jessica ended up pleading guilty to the marijuana possession charge at her first appearance and the case ended that day. It was a minor blip in her life. Years later, but before the enactment of the FCA, Jessica appeared at a job-fair at a large employer in Manhattan. She completed an application and successfully interviewed with a recruiter, After the interview, she was given another sheet of paper to fill out that required her to list all of her criminal offenses. On the spot, without time to check her records or try to reach an attorney, she provided information regarding her criminal record as best as she could remember it and disclosed only the felony offense, a defining experience in her life up to that point, and forgot to list the misdemeanor. When the company received a copy of her background check, both convictions appeared. On its own accord, and without conducting an analysis of whether she intentionally misrepresented her record or whether the misrepresentation was the result of a simple mistake, the employer revoked Jessica's job offer,

concluding that the mistake was an intentional one. The employer argued that it did not even have to perform an Article 23-A analysis on Jessica's convictions because, in the employer's eyes, Jessica's alleged misrepresentation meant that she no longer had any 23-A protections.

At Youth Represent, we see cases like Jessica's all the time. In our experience, any inconsistency in an applicant's criminal record self-disclosure is used by employers to discriminate against someone under the guise of "intentional misrepresentation," typically without conducting an analysis of the applicant's criminal record pursuant to the Article 23-A factors. This practice goes far beyond the narrow intentional misrepresentation defense contained in Article 23-A[8], which allows an employer to deny employment to an applicant who the employer discovers intentionally misrepresented their criminal record. It also brings the structural racism in the criminal justice system into the hiring process because this criminal record memory test disproportionately affects Black and Latinx people.

One's criminal record is the result of a long, complex, traumatic experience. The result, as it appears on paper, is an incredibly simplified snapshot of that process. Many people with criminal records leave court with a confused understanding of how their cases end. The court system, for its part, does not provide people with any written summary of the proceedings or how they ended. Neither do most public defenders. In all of our intakes, we ask clients, "If you were applying for a job, and you were asked if you'd ever been convicted of a crime, how would you answer?" These intakes are private, attorney-client protected one-on-ones, designed to get a sense of how well our clients understand their records before we can review their record together. We found that only 56% of our clients accurately report their criminal histories at the time we meet them. 35% inaccurately report their criminal records. Of that group, 8% of our clients over-report by disclosing a case that would not appear on a background check, and 27% under-report. These numbers are likely too simplified because we do not ask clients for their full criminal record, broken down case by case, as many employers who require self-disclosures do.

There are countless reasons for this confusion. A person may end up pleading guilty to an offense that is different from the crime they were originally charged with; they may have misremembered old convictions; they may have been confused about the difference between a felony, a misdemeanor, a violation, an adjournment in contemplation or dismissal, a repleader, or a YO; they may have failed to understand the full extent of information sought by an employer on a job application; or, they may simply have forgotten to list something while completing onboarding paperwork. A person's record may also be misrepresented due to common errors from private background check companies, or, because of a distinction between OCA and DCJS records. A colleague worked with a client who applied for a job at the Parks Department, which requires a fingerprint-based background check. This client obtained all of his Certificates of Disposition from court, but, in one case, his date of birth was incorrectly entered (by the court), so, that case did not appear when he went to get his Certificates of Disposition. This client reported his felony conviction but did not report a misdemeanor because it did not show up when he went to court. He was let go.

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[8] *See* N.Y. Correct Law § 751 ("Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.").

The amendment to 8-107(10)(g) attempts to create an opportunity for an applicant like Jessica who is suspected of having misrepresented their criminal record to be heard about any inconsistency in their self-disclosure. This is a positive step. However, the proposed amendments to the NYCHRL may unintentionally lower the bar for an employer to argue an applicant has failed to satisfactorily disclose their criminal record. If passed, an employer would no longer need to claim an applicant *intentionally misrepresented* their record, only that the applicant misrepresented it. The Council should strengthen the protections in Article 23-A by adding "intentional' back into the statute and by more clearly developing the protections the proposed amendment begins to put in place.

The process contemplated in the amendment to Section 8-107(10)(g) is a helpful step towards limiting the intentional misrepresentation defense that is already used too broadly by employers. We believe it should go further. As written, the amendment would only require an employer to point to an applicant's misrepresentation and allow time for a response. We propose language that clarifies the narrow intentional misrepresentation exception in Article 23-A. If an employer alleges that an applicant intentionally misrepresented their record, the burden must fall on the employer to prove it. An employer should not be permitted to merely arrive at the conclusion that an applicant intentionally misrepresented their criminal record without conducting an analysis into whether the applicant had the specific intent to misrepresent their criminal record. Even if an employer, after conducting an analysis of the applicant's intent, establishes that the applicant did in fact intentionally misrepresent their record and deny employment to the applicant, the denial must be treated as a denial "by reason of such person or employee having been convicted of one or more criminal offenses,"[9] such that the employer must perform an analysis of the Article 23-A factors, share that analysis with the applicant along with the employer's analysis of whether the applicant intentionally misrepresented their criminal record, and allow the applicant a reasonable period to respond to the employer's conclusion.

Fair Chance Act Exceptions

The amendment to Section 8-107(11-a)(f)(3) would add a significant exception to the FCA for any "position for which any federal, state or local law requires criminal background checks for employment purposes or bars employment based on criminal history." This exception is far too broad. The Council should eliminate this proposed amendment and amend the FCA so that it aligns with the New York City Commission on Human Rights' Legal Enforcement Guidance that the FCA applies "any time an employers' decision is discretionary, meaning it is not explicitly mandated by law."[10] Eliminating every position that requires a background check from the protections of the FCA is a tremendous change to the scope of the NYCHRL, and will acutely impact low income workers, who work in many positions that require city, state, or federal licenses.

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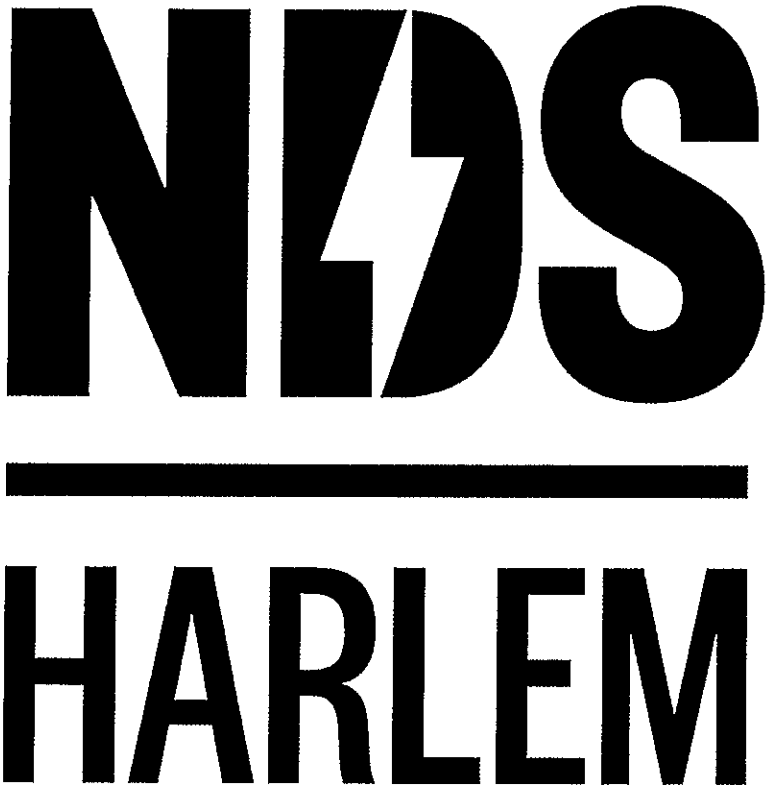
[9] *See* N.Y. Correct Law § 752.

[10] *NYC Comm'n on Hum. Rts. Legal Enforcement Guidance on the Fair Chance Act*, Local Law No. 63 (2015) (revised May 24, 2019), https://www1.nyc.gov/site/cchr/law/fair-chance-act.page.

Statutory Damages

In order for the FCA to fulfill its potential, it must allow for statutory damages. The City Commission on Human Rights can impose fines on employers that violate the FCA. For private litigants, however, not having statutory damages can be a hurdle to forcing an employer that is violating the FCA to come to the table to change its policies. For example, we often represent clients who have been asked questions about their criminal record or to authorize for the employer to conduct a background check before a job offer arrives. Without a statutory damages provision, an employer's value of the claims in individual litigation are low. For an employer, a case that presents a low damages figure is not one that will be taken seriously enough to warrant company-wide injunctive relief. We propose a framework akin to the Fair Credit Reporting Act, 15 U.S.C. § 1681(n)(a), which provides for a damages range from $100-$1,000, with no cap for actual damages.



TESTIMONY OF THE NEIGHBORHOOD DEFENDER SERVICE

before the

NEW YORK CITY COUNCIL
COMMITTEE ON CIVIL AND HUMAN RIGHTS

IN RELATION TO

Int 1314-2018

by

Emily Ponder Williams
Managing Attorney, Civil Defense Practice

January 22, 2020

Testimony of Emily Ponder Williams

Introduction

I am Emily Ponder Williams, Managing Attorney in the Civil Defense Practice at the Neighborhood Defender Service of Harlem (NDS). NDS is a community-based public defender office that provides high-quality legal services to residents of Northern Manhattan. Since 1990, NDS has been working to improve the quality and depth of criminal and civil defense representation for those unable to afford an attorney through holistic, cross-practice representation. As part of its holistic mission, NDS's Civil Defense Practice provides consultations, advocacy, and legal representation to clients facing the collateral consequences of an arrest or conviction.

Presumed Guilty – The Employment Consequences of Arrest

Often, the harshest sentence associated with an arrest is not a term of incarceration. Instead, it is the shadow of an arrest record that follows a person after a touch with the criminal justice system and saddles them with consequences that linger long after they walk out of the criminal court. When it comes to employment, this sentence is all-too often imposed even before the resolution of case, as a mere arrest routinely results in job suspension, loss and denial while charges are pending. As a result, NDS clients are forced to make a decision: enter a plea to invoke the employment protections of the City's current Human Rights Law in order regain their livelihood, or exercise their right to contest the charges against them.

For many NDS clients, employment consequences are automatic, triggered by an arrest regardless of the eventual outcome of a proceeding. For instance, information about a client's arrest is often transmitted directly to their employer by city and state licensing and regulatory agencies as soon as it happens. In many cases, it is the employer or agency's practice to automatically suspend our clients while charges are pending, despite the nature of the charges. Additionally, a job hunt can be put on hold for months while clients assert their innocence in criminal court because open charges appear on a background check. For these clients, there is no such thing as innocent until proven guilty – the fact of a charge is enough to strip them of their ability to support themselves and their family.

Moreover, these consequences persist even when a court has entered a disposition that absolves our clients of any criminal responsibility such as an Adjournment in Contemplation of Dismissal ("ACD") or a violation. An ACD is essentially an administrative order entered with the consent of both the defense and the prosecution. Requiring no concessions or admissions, the order adjourns a case for administrative dismissal and termination of the charges after a certain period of time – most typically, six months – without any future court appearances or conditions. Although an ACD may be revoked and a case re-opened if a person is re-arrested within the adjournment period, it is NDS's experience that nearly 100 percent of ACDs are dismissed as scheduled. However, regardless of the inevitable dismissal of an ACD, many NDS clients face persistent employment barriers during the adjournment period because an ACD technically appears on background reports as an "open" case until the actual dismissal of the charges.

Likewise, a violation disposition is a non-criminal resolution of a case that automatically seals; however, until sealed, employers often times unfairly impute criminal responsibility based on charges that ultimately were not sustained.

Conclusions and Recommendations

The proposed amendments are a significant step toward reducing the stigma associated with a mere arrest by providing workers who are contesting charges with the same protection available to individuals whose charges resulted in a criminal conviction and removing many of the barriers posed by an arrest not resulting in a criminal conviction. However, in order to truly pave the road forward and address the persistent discrimination experienced by people like NDS's clients, this Committee should consider incorporating several key changes to the amendments. Specifically:

- Specify that subdivision 10(g) permits adverse action only where there has been an *intentional* misrepresentation regarding conviction history. Ensuring discrimination is permissible only where a misrepresentation is intentional comports with Article 23-A of the Correction Law whereas the amendment as written weakens the significant protections gained through this legislation.
- Include language in subdivision 11-a(b) that prohibits inquiry into unsealed violations and non-criminal offenses. Permitting inquiry into these non-criminal dispositions, which do not appear on commercial background checks or DCJS RAP sheets for civil purposes, opens the door to prejudicial treatment of applicants who have had no finding of criminal responsibility made against them. This dilutes the important de-stigmatizing purpose of these amendments.
- Eliminate the subdivision 11-f(3) amendment exempting any position from protection where a background check is required by law and instead retain the previous language. This amendment actually reduces the protections offered under the preexisting language, which exempted only adverse actions that were permitted or required by other law. The amendment, however, would fully exempt employers of any position where a background check is required, permitting, for instance, advertisements that restrict applicants who have a criminal history.

New Yorkers who are presumed innocent should be afforded every opportunity to find and hold meaningful work in order to support themselves and their families. These amendments open significant doors to those ensnared in our expansive criminal justice system. However, we urge this Committee to consider incorporating language that ensures both applicants and current employees are broadly covered under provisions restricting discrimination based on charges, ACDs, and violations and, additionally, limiting exemptions only where they are explicitly required by law.

THE
LEGAL AID
SOCIETY
CRIMINAL
DEFENSE

TESTIMONY

The Council of the City of New York
Committee on Civil and Human Rights

Hearing on Proposed Int. 1314-A - In relation to prohibiting discrimination based on one's arrest record, pending criminal accusations or criminal convictions

Presented by:
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January 22, 2020

Good morning. My name is Melissa Ader, and I am a staff attorney in the Worker Justice Project, an initiative of The Legal Aid Society's Criminal Defense Practice. The Worker Justice Project is a specialized project dedicated to combating employment discrimination faced by people with criminal records living in New York City. We thank the Committee for the opportunity to provide testimony in strong support of Proposed Int. 1314-A and to recommend further amendments to the bill.

Organizational Information

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Our Civil, Criminal Defense, Juvenile Rights, and Pro Bono practices work tirelessly in and out of the courtroom to defend our clients and dismantle the hidden, systemic barriers that can prevent them from thriving in New York City. The Society's Criminal Defense Practice is at the forefront of public defense in New York City—playing a major role in shaping the practice of criminal defense and the criminal legal system. The Practice's expansive reach spans from our client representation in courts across all five boroughs of the city to our ongoing, active presence and partnership in communities. As the primary public defender in NYC, we are committed to protecting the rights of the most marginalized and disenfranchised people in society. We provide representation on trial and post-conviction litigation on close to 200,000 direct legal matters, while our class action litigation and policy reform work address unjust laws and policies.

The Worker Justice Project, founded in January 2019 as an initiative of the Society's Criminal Defense Practice, combats discrimination faced by workers with arrest or conviction records living in New York City. Every day employers and licensing agencies unfairly deny qualified individuals the opportunity to work because of pending charges, past convictions, and

even sealed or dismissed cases. This discrimination prevents countless New Yorkers from maintaining financial stability and supporting their families—and further disenfranchises people of color already subjected to discriminatory employment practices and the racist administration of criminal justice. The Worker Justice Project fights this discrimination through a bold and comprehensive approach. The Project advises Criminal Defense Practice staff on the employment consequences of criminal case dispositions in order to minimize harm to clients' job opportunities, and empowers workers with records to defend their rights. The Project also enforces the rights of workers who are unlawfully denied jobs or licenses because of arrest or conviction records by representing workers in administrative proceedings, pre-litigation advocacy, and affirmative litigation. Finally, the Project challenges government policies that create barriers to employment and advocates for legislative solutions to effect systemic change.

In 2019, the Worker Justice Project provided legal services on more than 1,100 matters for workers with criminal records. Our legislative advocacy helped lead to the enactment of new statutory protections at the State level that will benefit annually more than 80,000 New Yorkers with records. We also successfully advocated for the improvement of multiple administrative agency policies that will enable countless New Yorkers with records to access licensure and employment.

We Strongly Support Proposed Int. No. 1314-A

The Society strongly supports Proposed Int. No. 1314-A, which takes important steps to fix unjust inequities in New York City's current criminal record discrimination law. Under current law, a New Yorker with a pending criminal case has fewer statutory protections from employment discrimination than a New Yorker who has been convicted of a crime. A New Yorker who is convicted of an offense after the start of their employment has fewer statutory

protections at their current job than they will have if they apply for a new job. A New York City resident who is convicted of a non-criminal violation has fewer antidiscrimination protections than people who live in other parts of New York State, because New York City courts seal violations far more slowly than courts in the rest of New York State. Finally, because New York's violation-level sealing law does not apply to the violation of loitering for the purpose of engaging in prostitution (an offense for which transgender women of color are disproportionately prosecuted), a New Yorker who is convicted of that offense has fewer antidiscrimination protections than someone convicted of any other violation.

These inequities have resulted in job loss and poverty for countless clients of the Criminal Defense Practice. Well over half of the Criminal Defense Practice's clients are charged with misdemeanors or petty offenses, and a large share of these clients are young people of color, whose neighborhoods bear the brunt of especially intensive law enforcement by the Police Department. Many of these clients are suspended from work shortly after their arrest and have no legal recourse to challenge their suspensions. The loss of employment income prevents these New Yorkers from supporting themselves and their families while their criminal case is pending. We have seen many clients decide to accept a plea agreement simply because a guilty plea provides the fastest way for them to return to work.

The lack of employment discrimination protections for people with pending cases is particularly troubling because approximately 80% of misdemeanor arrests in New York City do not end in a criminal conviction.[1] New Yorkers are forced into unemployment simply because of an arrest, even though their criminal prosecution has an 80% chance of ending without a criminal conviction! We believe that workers are entitled to the presumption of innocence and should

[1] ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING 153, 173 (2018).

have total protection from employment discrimination based on a pending, unproven charge. Although Proposed Int. No. 1314-A does not provide total protection to these workers, it takes a significant step in the right direction by requiring employers to make individualized determinations before taking adverse action based on a pending case.

We also strongly support Int. No. 1314-A because it requires that employers make an individualized assessment before taking adverse action on the basis of a conviction that occurs after the start of employment. Under current law, such employees have no statutory protections from employment discrimination, even if they are excellent workers whose conviction is unrelated to their job. To qualify for protections under existing law, these employees must apply for a new job – a forced job transition that hurts workers, the clients they serve, and their families. By requiring that employers make an individualized assessment of an employee's new conviction, Int. No. 1314-A is simply requiring employers to use the same careful, multi-factor analysis that the City Human Rights Law already requires with respect to applicants who have a prior conviction history. Unionized employees already have contractual protection against firings based on new convictions. Lower-paid, struggling workers deserve these protections as well.

Finally, we strongly support Int. No. 1314-A because it entirely prohibits employment discrimination based on a criminal case that results in a non-criminal violation and because it requires employers to lift a prosecution-related suspension immediately after a criminal case results in a violation. As discussed below, this new prohibition helps to correct unfair employment discrimination that is rooted both in the geographical location of a prosecution and the gender identity of a prosecuted person.

- Geographic discrimination: Under current law, most violations are eventually sealed, and New Yorkers are protected from employment discrimination after their violation is

sealed. In most of New York State, non-criminal violations are sealed at sentencing. In New York City, however, criminal courts have created a unique practice of refusing to seal most violations until a year after sentencing. This means that in New York City – unlike in the rest of New York State – individuals who have not been convicted of a crime are subject to employment discrimination for a full year after the resolution of their criminal case. Int. No. 1314-A corrects this injustice.

- Gender identity discrimination: The non-criminal offense of loitering for the purpose of engaging in a prostitution offense, Penal Law § 240.37, is the only offense in the Penal Law that is ineligible for violation-level sealing. This carve-out from New York's sealing law is particularly troubling because people who are prosecuted for violating Penal Law § 240.37 are disproportionately transgender women of color, and are often immigrants.[2] By prohibiting discrimination based on a violation-level offense, including a violation of Penal Law 240.37, Int. No. 1314-A enables people convicted of this non-sealable offense to work and support their families.

Suggested Modifications to Proposed Int. No. 1314-A

We ask the Council to consider making the following changes to the proposed legislation.

1) ***We request the modification of proposed § 8-107(11-a)(f)(3), which decimates the Fair Chance Act by making the Act inapplicable to a large proportion of low-wage workers.***

Likely unintentionally, proposed § 8-107(11-a)(f)(3) guts the existing protections of the Fair Chance Act. Existing § 8-107(11-a)(e) exempts from the protections of the Fair Chance Act "any actions taken by an employer or agent thereof pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on

[2] Ginia Bellafante, *Poor, Transgender and Dressed for Arrest*, N.Y. TIMES (Sept. 30, 2016), https://www.nytimes.com/2016/10/02/nyregion/poor-transgender-and-dressed-for-arrest.html; Emma Whitford, *Surge in Prostitution Related Loitering Charges Affects Undocumented Immigrants*, DOCUMENTED (Dec. 19, 2018), https://documentedny.com/2018/12/19/surge-in-loitering-charges-may-affect-undocumented-immigrants/.

criminal history." That is, existing law only exempts those particular employer actions that are specifically mandated by other background check laws. In contrast, proposed § 8-107(11-a)(f)(3) significantly broadens the exemption to cover "any actions taken by an employer or agent thereof with regard to . . . An applicant for employment or a current employee employed in a position for which any federal, state or local law requires criminal background checks for employment purposes or bars employment based on criminal history." The proposed exemption will exempt from the Fair Chance Act any employer action taken with respect to a worker in an industry with legally mandated background checks—even those employer actions that are not specifically mandated by a background check law.

This language change will strip the protections of the Fair Chance Act from a huge group of low-wage workers—perhaps the majority of low-wage workers—in New York City. Various laws require background checks or bar employment based on specific criminal history for most people who work in the low-wage industries of healthcare, direct care, and security guard work, or in government. Most of my clients work in the aforementioned industries. For example, one of my clients has a misdemeanor conviction record that is almost 20 years old. She is a certified nurse aide who has applied for many jobs in the healthcare and direct support industries. Multiple government agencies, including the State Department of Health, the State Justice Center for the Protection of People with Special Needs, and the City Department of Education, have cleared her to work after reviewing her conviction record pursuant to legally mandated background check policies. Nevertheless, various private employers in the healthcare, direct support, and education fields have denied her employment because of the stigma surrounding any conviction record. These employers only offered her employment after I intervened on her behalf and informed the employers that they had violated the Fair Chance Act.

Under the current language of § 8-107(11-a)(e), my client is entitled to most of the protections of the Fair Chance Act because the § 8-107(11-a)(e) exemption only applies to employer actions that are specifically mandated by law. For example, those employers who are required by Public Health Law § 2899-a(1) to request that the Department of Health run a background check on my client are permitted to make such a request because that is an "action[] taken . . . pursuant to any state, federal or local law." If the Department of Health directs an employer to deny employment to my client (which, as I stated before, has not happened), the employer may deny her employment without providing her with a copy of the Fair Chance Act Notice because the denial of employment is an "action[] taken . . . pursuant to any state, federal or local law" (specifically, pursuant to Executive Law § 845-b(5)(h)). However, the Fair Chance Act as currently written protects my client in situations where an employer takes an action that is not specifically mandated by state, federal or local law. For example, if the Department of Health approves my client to work for an employer, that employer may not deny her employment based on her conviction record unless the employer provides her with a copy of their background check inquiry and the Fair Chance Act Notice, gives her a reasonable period to respond, and considers her response pursuant to Article 23-A of the Correction Law – because if the Department of Health approved her to work, the job denial would not be an "action[] taken . . . pursuant to any state, federal or local law."

Unfortunately, under the proposed language of § 8-107(11-a)(f)(3), my client will lose all the Fair Chance Act protections she currently holds because she seeks to work "in a position" for which a background check is required by law. This language change is likely unintentional, but the consequences are enormous. She, and the many thousands of low-wage workers in New York City who work in industries in which a background check is required by law or in which certain

convictions are disqualifying, will lose the Fair Chance Act protections of which the City Council is rightly proud. If this happens, the Fair Chance Act will lose its value. The exception will swallow the rule, and low-wage workers in New York City will return to the state they were in before the Fair Chance Act's enactment in 2015.

One way to correct this likely unintentional change is to return to the previous language of § 8-107(11-a)(e). Another option is to follow the lead of the Equal Employment Opportunity Commission's criminal record guidance by replacing current § 8-107(11-a)(e)/proposed § 8-107(11-a)(f)(3) with the following language: "Compliance with any state, federal or local law that conflicts with the Fair Chance Act [N.Y.C. Admin. Code § 8-107(11-a)] is a defense to a charge of discrimination under the Fair Chance Act."[3]

2) ***We request the addition of the word "intentional" to proposed § 8-107(10)(g) to make it consistent with State law.***

New York Correction Law Article 23-A states, "Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee."[4] In contrast, the text of proposed § 8-107(10)(g) states that an employer may take adverse action based on any misrepresentation, including an unintentional misrepresentation. The proposed language conflicts with State law, detracts from City law prohibiting discrimination that has a disparate impact on people of color, and harms workers. To correct the proposed language, we recommend adding the word "intentional" before the word "misrepresentation," which appears twice in proposed § 8-107(10)(g).

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[3] Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.
[4] N.Y. Correct. Law § 751 (emphasis added).

In our experience, workers' failure to fully disclose their criminal record is often unintentional. Several of my clients have been discriminated against because they disclosed only some of their convictions. They did not intend to deceive; instead, they made only a partial disclosure because they did not understand their criminal record, they forgot about some of their older or less serious convictions, or they made an unintentional error when filling out paperwork. The criminal legal system is complicated, and it is easy for low-wage workers to make an error when attempting to describe their conviction record. New York State does not provide a simple way for workers to understand their criminal record. Few New Yorkers know how to apply for their RAP sheet, and the application process is time-consuming and often expensive. Those individuals who obtain their RAP sheet often have difficulty reading it, because a RAP sheet is a complicated and confusing document that requires a sophisticated level of knowledge about the criminal legal system.

Permitting employers to discriminate based on unintentional misrepresentation will have a disparate impact on low-income New Yorkers of color. It is well documented that people of color are disproportionately targeted for arrest in New York City.[5] Because the pool of people with arrest or conviction records is disproportionately people of color, a practice of disqualifying people who do not disclose their criminal records with perfect accuracy has a disparate impact on applicants of color. The policy amplifies the already devastating impact that a criminal record has on people of color's employment opportunities. People of color with conviction records are

[5] *See, e.g.*, Anna Flag & Ashley Nerbovig, *Subway Policing in New York City Still Has A Race Problem*, MARSHALL PROJECT (Sept. 12, 2018), *available at* https://www.themarshallproject.org/2018/09/12/subway-policing-in-new-york-city-still-has-a-race-problem; Benjamin Mueller et al., *Surest Way to Face Marijuana Charges in New York: Be Black or Hispanic*, N.Y. TIMES (May 13, 2018), *available at* https://www.nytimes.com/2018/05/13/nyregion/marijuana-arrests-nyc-race.html.

denied employment far more often than white people with comparable conviction records.[6] They face intense stigma and are denied jobs even when there is no relationship between their conviction record and their ability to perform the duties of the job.[7] These job denials have helped create an underclass of New Yorkers of color with conviction records who cannot find stable employment.

Discrimination based on unintentional misrepresentation is essentially an "honesty test" where the vast majority of the people tested are people of color. People without a conviction record are not subjected to this honesty test. By only imposing the honesty test on New Yorkers with conviction records, employers are primarily disenfranchising New Yorkers of color. The City Council should not condone such disenfranchisement.

Accordingly, we respectfully request that the City Council revise the language of proposed § 8-107(10)(g) to comport with State law by adding the word "intentional" in the two places where the word "misrepresentation" appears. Alternatively, we respectfully request the deletion of proposed § 8-107(10)(g).[8]

3) ***We request that proposed § 8-107(11)(b) prohibit inquiries into non-criminal violations.***

Although proposed § 8-107(11)(b) prohibits discrimination on the basis of unsealed violations, it does not explicitly prohibit employers from inquiring about unsealed violations. If employers are permitted to inquire about unsealed violations, there is a significant risk that they will discriminate on the basis of unsealed violations. There is also no reason to permit employers to inquire about unsealed violations. New York State law already prohibits consumer reporting

[6] *See* Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 959 (Mar. 2003), *available at* https://scholar.harvard.edu/pager/publications/mark-criminal-record (noting that the negative effect of a criminal record is 40% larger for black job applicants than white job applicants).
[7] *See* Bruce Western & Catherine Sirois, *Racialized Re-entry: Labor Market Inequality After Incarceration*, SOC. FORCES (Oct. 2018), *available at* https://doi.org/10.1093/sf/soy096.
[8] If proposed § 8-107(10)(g) is deleted, we respectfully request that the proposed language regarding failure to divulge information that a person may not be required to divulge be added to proposed § 8-107(11)(a) and (b).

agencies from disclosing unsealed violations in the background checks they provide to employers.[9] The State Office of Court Administration does not disclose unsealed violations on the Criminal History Record Search reports that it provides to the public.[10] And, effective April 11, 2020, State law will prohibit the State Division of Criminal Justice Services from disclosing unsealed violations on RAP sheets produced for civil purposes, including for employment purposes.[11] Accordingly, we respectfully request that proposed § 8-107(11)(b) be amended to prohibit inquiries on the basis of unsealed violations.

4) ***We request two modifications to the definition of "relevant fair chance factors" proposed at § 8-102.***

We request two modifications to the definition of "relevant fair chance factors." First, proposed factor F (information about rehabilitation or good conduct) only applies to employees, and we request that it be modified to apply also to applicants. Job applicants should be given the opportunity to produce evidence of their accomplishments and good conduct because such evidence is highly relevant in determining whether an applicant's arrest record will prevent them from being a good employee. If permitted to provide evidence of their good conduct, job applicants will be able to provide evidence such as their work performance at prior jobs and their enrollment in programming such as anger management. This opportunity is particularly important because in New York City, it can take years for a pending criminal case to conclude. New Yorkers whose cases have been pending for years are likely to have significant evidence of their good conduct since the time of the alleged offense, and employers should be required to consider that evidence.

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[9] N.Y. Gen. Bus. Law § 380-j(a)(1).
[10] New York State Unified Court System, *Criminal History Record Search FAQs*, http://ww2.nycourts.gov/APPS/chrs/faqs.shtml.
[11] L.2019, c. 55, pt. II, subpt. N, § 1 (enacting N.Y. Exec. Law § 845-d).

Second, we request the addition of a factor that considers the age of the person at the time of the alleged offense. An offense committed when a person is younger than 25 years old is significantly less predictive of that person's likelihood to commit a similar offense than an offense committed when a person is older. For the purpose of describing brain maturation, scientists consider "adolescence" to comprise the period of 10-years-old through 24-years-old.[12] The prefrontal cortex, the part of the brain responsible for behavioral maturity and the capacity to exercise good judgment, "is not complete until near the age of 25 years."[13] Just as State law requires employers to consider the age of the person at the time of commission of the offense, so should the Fair Chance Factors require employers to consider a person's age at the time of the alleged offense when considering a pending case or new criminal conviction.

5) We request the following additional modifications.

i. Consider deleting proposed § 8-107(9)(a)(5)(i), which is redundant of proposed § 8-107(9)(a)(4) and does not include all provisions of the Criminal Procedure Law that authorize adjournments in contemplation of dismissal. Also consider deleting the phrase "an order" in proposed § 8-107(9)(a)(5)(iv) because it is redundant of proposed § 8-107(9)(a)(4).

ii. In proposed § 8-107(10)(f), we request that the language "The provisions of this subdivision" be replaced with "The provisions of paragraphs of paragraph (b) and (c)." Although the protections of Article 23-A of the State Correction Law, which is incorporated into paragraph (a) of § 8-107(10), do not apply to membership in a law enforcement agency, they do apply to those peace officers and peace officer applicants who do not work in a law enforcement

[12] See Mariam Arain et al., *Maturation of the Adolescent Brain*, 2013:9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 450-52 (2013), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/.
[13] Id. at 453.

agency.[14] As written, proposed § 8-107(10)(f) seems to take away protections that the State has provided to peace officers and peace officer applicants working in non-law enforcement agencies.

iii. We request that proposed § 8-107(11)(a) and 8-107(11)(b) make it an unlawful discriminatory practice to "require the disclosure of information about" the relevant arrest or violation records. Such language would make § 8-107(11) consistent with the protections in the State Human Rights Law.[15] Although proposed § 8-107(11)(a) prohibits employers from making inquiries about certain types of cases, adding the aforementioned language would make explicit that an employer may not discriminate based an applicant or employee's failure to divulge information about a sealed case or non-criminal violation.

Conclusion

We thank you for hearing our testimony today. We strongly support Proposed Int. No. 1314-A, an important bill that will give applicants and employees a fair chance at securing and maintaining employment. We believe that our recommended modifications to Proposed Int. No. 1314-A will make the bill more effective, and we are happy to answer any questions about these recommendations. We look forward to continuing to work with the City Council to ensure that all New Yorkers have a meaningful opportunity to work and maintain financial stability.

[14] N.Y. Correct. Law § 750(5); Exum v. N.Y.C. Health & Hosp. Corp., 37 Misc. 3d 1218(A), 964 N.Y.S.2d 58 (Sup. Ct. Kings County 2012).

[15] See N.Y Exec. Law § 296(16) (stating that "[i]t shall be an unlawful discriminatory practice . . . to make any inquiry about" certain categories of criminal cases and that "no person shall be required to divulge information pertaining to" certain categories of criminal cases.").

BROOKLYN DEFENDER SERVICES

TESTIMONY OF:

Shelle Shimizu – Staff Attorney

BROOKLYN DEFENDER SERVICES

Presented before the New York City Council Committee on Civil and Human Rights

Hearing Regarding Proposed Int. No. 1314-A

January 22, 2020

My name is Shelle Shimizu and I am an attorney in the Employment Law Unit at Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy in approximately 30,000 cases in Brooklyn every year. I thank the New York City Council Committee on Civil and Human Rights and Chair Mathieu Eugene for the opportunity to testify today about discrimination based on arrest record, pending criminal accusation or criminal convictions.

BDS's employment practice provides legal representation and informal advocacy to people facing employment discrimination due to current or prior contact with the criminal justice system. Our clients face numerous formal and informal barriers to employment. Many are suspended or terminated from employment upon arrest and absent any finding of criminal culpability. Others are completely excluded from employment opportunities due to their criminal histories. I have represented numerous clients who have lost, or have been completely excluded from, employment opportunities due to current or prior criminal justice involvement.

Background

In 2019, New York State implemented legislation to expand criminal record discrimination protections to include people who have received an adjournment in contemplation of dismissal (ACD). While an ACD is not yet a sealed record under the provision of the Criminal Procedure Law, and is and therefore is not considered "terminated" in the defendant's favor, these cases are routinely dismissed and sealed after the passage of six months or a year, depending on the

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charge. The passage of A. 4038A/S. 3205A brought arrested persons whose criminal charges have been ACDed within the protection of those provisions of the Human Rights Law, which prevent employment discrimination against persons who have been arrested but not convicted of any crime.

A large and vulnerable population is still excluded from these protections—current employees with open cases. In 2017, approximately 240,000 adult arrests were made in New York City. This means that up to a quarter million New Yorkers were vulnerable to employment-related collateral consequences and were excluded from legal protection.[1]

Similar to ACDs, many cases resolve with a plea to a violation such as disorderly conduct, instead of a higher charge. Our clients are sentenced to a one-year conditional charge. In Brooklyn, these clients must often wait for the one-year conditional charge to elapse before the Court indicates these dispositions are sealed. This bill would expand the protections offered to those with ACDs to those with unsealed violations.

Client Stories

Ms. H worked as a home-health aide caring for elderly individuals, a position she held for nearly eight years. Ms. H was arrested while trying to physically defend herself from her sibling. Although she did not have a prior criminal history, as a result of the arrest, Ms. H was suspended from her job without pay or benefits. At the time, she was the sole financial provider for her children. It took nearly two months for her case to resolve, and every day she worried about losing her home and providing for her children. After her defender successfully negotiated a non-criminal disposition, her employer eventually allowed her to return to work. No court ever found Ms. H guilty of a crime. Nonetheless, she could not help but feel that she had been punished.

Ms. DM worked as a counselor for children and was suspended from work due to an arrest. The arrest stemmed from an alleged altercation with her sister. Even though the allegations were not directly related to her position, her employer refused to allow her to return to work. At this time Ms. DM's criminal defense attorney predicted that her case would be open for another 3 months. Ms. DM tried to apply for new jobs, but other employers would not hire her due to her open case. Ms. DM reached out to our employment unit for assistance because she had no way to pay her rent or provide for her child. She was worried that she and her child would need to enter the shelter system if she did not find work soon. Our employment unit engaged in direct advocacy with the employer and through many conversations we were able to get Ms. DM back to work months before her case was resolved.

Ms. D worked as a home attendant prior to her arrest in May 2019, when she lost her employment due to the arrest. In October 2019, her criminal case favorably resolved with a violation that will eventually be sealed. Unfortunately, Ms. D. continued to have difficulty finding work because background checks continued to show that she had an open case. Although she was eventually able to correct that misinformation with information about the violation, the unsealed violation itself has posed a problem for her ability to find a job despite

[1] Adult Arrests: 2008-2017, N.Y. DIVISION OF CRIM. J. SERVS. (Feb. 16, 2018), http://www .criminaljustice.ny.gov/crimnet/ojsa/arrests/nyc.pdf [https://perma.cc/W5YE-SQX7].

numerous applications and interviews, and she remains unemployed as of the date of this testimony.

These are just a few examples of the many people Brooklyn Defenders Services works with every day whose lives are irreparably damaged and thrown into turmoil by their arrests, all without any finding of criminal culpability.

Intr. 1314-2018

BDS supports Intr. 1314-2018, which would **amend** the administrative code of the City of New York, in relation to prohibiting discrimination based on one's arrest record, pending criminal accusations or criminal convictions.

Many BDS clients are suspended or terminated from their current employment merely because of an arrest. This is alarming because an arrest does not amount to a finding of criminal culpability—by definition, neither guilt nor innocence has been adjudicated by a court of law at the charging stage of the criminal process. Further, individuals are too often arrested and processed through the criminal justice system without any criminal culpability: overpolicing of communities and persons of color, unnecessary intrusion into domestic affairs, and false reports can all factor into an individual's arrest.[2]

A recent Bronx Defenders study underscores this point, finding that the typical defendant charged with misdemeanor drug possession wishing to fight her case could expect to wait 240 days and make five court appearances before any disposition is reached.[3] In the meantime, if she is employed, she could be suspended without pay, lose her health and employment benefits, and even be terminated due to her open case. Unemployed and without income, she will not only face an uphill battle to obtain government benefits but will also find it very difficult to find alternative work as certain employers will hold applications in abeyance until the case is resolved.[4]

Additionally, removing these barriers to hiring, licensing, and continued employment will help reduce collateral consequences in other areas and help ensure New Yorkers who rely on

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[2] See Floyd v. City of New York, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013) (finding that New York Police Department officers engaged in "indirect racial profiling" by targeting racial minority neighborhoods at higher rates); see also Harold Stolper & Jeff Jones, The Crime of Being Short $2.75: Policing Communities of Color at the Turnstile, Community Services Soc'y (October 2017), http://lghttp.58547.nexcesscdn.net/803F44A/images/nycss/images/uploads /pubs/Fare_Evasion_FINAL_10_6_17_smaller.pdf [https://perma.cc/Y49M-GM3S]; Racial Disparities in NYC Arrest Data for Marijuana Possession, INNOCENCE PROJECT (May 14, 2018), https://www.innocenceproject.org/racial-disparities-in-nyc-arrest-data-marijuana-possession/ [https://perma.cc/GBG7-NVFZ] (finding that between January and March of 2018, 93% of those arrested for marijuana use were persons of color.)' See generally Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010); Dorothy E. Roberts, Prison, Foster Care, and the Systemic Punishment of Black Mothers, 59 UCLA L. REV. 1474 (2012) (discussing overpolicing in communities of color).

[3] No Day in Court: Marijuana Possession Cases and the Failure of the Bronx Criminal Courts, BRONX DEFENDERS FUNDAMENTAL FAIRNESS PROJECT 6 (May 2013), http://www.bronxdefenders.org/wp-content/uploads/2013/05/No-Day-in-Court-A-Report-by-The-Bronx -Defenders-May-2013.pdf [https://perma.cc/SGM2-VTNT].

[4] For example, the New York State Justice Center, which regulates all organizations within New York that work with individuals with disabilities or special needs, will hold certain individual applications in abeyance until their case is resolved. N.Y. Comp. Codes R. & Regs. tit. 14, § 701.6 (2018); see also Division of State Gov't Accountability, Criminal History Background Checks of Unlicensed Health Care Employees, N.Y. OFF. OF STATE COMPTROLLER 2, https://osc.state.ny.us/audits/allaudits/093017/16s65.pdf [https://perma.cc/3JZ6-29HM].

employment income don't fall behind on rent, car payments, and countless other financial obligations solely because of pending criminal cases or favorably resolved contact with the criminal justice system.

Conclusion

BDS is grateful to New York City Council Committee on Civil and Human Rights for hosting this critical hearing and shining a spotlight this issue. Thank you for your time and consideration of my comments.

If you have any questions, please feel free to reach out Kathleen McKenna, Policy Social Worker at kmckenna@bds.org or 718-254-0700 x210.

MANHATTAN
Legal
Services NYC
DEMAND JUSTICE

Testimony before the
New York City Council Civil Rights Committee
Regarding Int. No. 1314-A
Prohibition of Discrimination Based on Arrest Record, Pending Criminal Accusations, or Criminal Convictions

January 22, 2020
Presented By
Washcarina Martinez Alonzo (Manhattan Legal Services)

This testimony is submitted on behalf of Legal Services NYC (LSNYC). LSNYC welcomes the opportunity to provide commentary on this important addition to the legislation and is thankful for the invitation to make this submission.

LSNYC is an anti-poverty organization that seeks justice for low income New Yorkers as one of the principal law firms for low income people in New York City. Manhattan Legal Services is a constituent corporation of LSNYC. For more than fifty years, we have helped our clients meet basic human needs and challenged the systemic injustices that keep them poor. As the largest civil legal services program in the country with community-based offices and numerous outreach sites located throughout the city's five boroughs, LSNYC has a singular overriding mission: to provide expert legal assistance that improves the lives and communities of low-income New Yorkers. We ensure low income New Yorkers have access to housing, health care, food, and subsistence income providing help that benefited 115,000 New Yorkers and their family members.

Recognizing the need to close the employment gap for low-income New Yorkers of color, we created the Barriers to Employment Project to improve job prospects for *all* New Yorkers. The Project has helped hundreds of clients who faced barriers to employment and conducted outreach to educate New Yorkers on their legal rights. We are here today to testify as to our experiences representing numerous clients with the goal of further expanding access and opportunities for gainful employment.

Int. 1314 Will Help Clarify Protections to Further Ensure That ALL New Yorkers Have a Fair Chance

Current Federal, State, and City laws already place requirements on employers that consider criminal history when making employment decisions. Most employers in New York City cannot deny a job based on a criminal conviction unless they have considered the conviction within a rigorous framework. New York City has already taken a pivotal stance with the Fair Chance Act, which makes it an unlawful discriminatory

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Peggy Earisman, Project Director

practice for most employers, labor organizations, and employment agencies to inquire about or consider the criminal history of job applicants until after extending conditional offers of employment, and establishes a fair chance process that allows applicants and employees an opportunity to address their criminal history with the employer. Based on our observations, the Fair Chance Act limits employees' job rejections, increases opportunities for employment and makes employment decisions more clear to applicants with criminal records. We have also noticed that the Fair Chance Act limits denials from jobs based on inaccurate criminal histories reported by background check.

Although the Fair Chance Act has increased many of our clients' ability to get and keep jobs, our clients still face discrimination in employment based on their criminal history. Protecting applicants by adding limitations to inquiries regarding pending arrests, pending adjournments in contemplation of dismissals, and pre-sealed violations expands the types of people and experiences in New York City's work force. In addition to clarifying the scope of the law, Int. 1314 would also add a step to the Fair Chance Process requiring the employer to affirmatively request an applicant's or employee's information relating to the Fair Chance factors already in place even *before* employers do their analysis. This added step gives applicants and employees an additional opportunity to explain to employers why the relevant fair chance factors weigh in their favor and why their criminal history should not be a barrier to their employment. Additionally, it enables applicants and employees to be better prepared for responding to a subsequent Fair Chance notice. In our experience, clients are often confused about how to respond to these notices and/or often miss the very short timeframe of three (3) business days to respond.

Given vulnerable New Yorkers' interactions with law enforcement, Int. 1314's expansion not only limits criminal records discrimination, but also limits discrimination on the basis of race. Black and Latinx people in New York City are over policed and thus disproportionately disadvantaged when it comes to seeking and securing employment. Despite the policy and legislative changes, in 2018 our City stopped 11,008 people, 88% which were Black or Latinx and an overwhelming 70% of which were innocent of what they were stopped for.[1] This disproportional contact with police is likely to lead to an arrest report and record, despite no evidence of wrong doing. This arrest record can unfairly impact an applicant's eligibility for employment. Even before they have a chance to enter adulthood, nationally, "Black youths have higher rates of arrests and detention than White youths...Black adolescents are 2.5 times as likely as Whites to have been arrested multiple times and 1.6 times as likely to have been arrested once."[2] The intersection of race and policing make legislation like the one we are discussing today invaluable to the redemption of New Yorkers who were arrested without wrong doing or for making a mistake. These experiences are further highlighted through the lives of our clients, who are punished for alleged crimes or violations that they were never charged or

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[1] *Stop and Frisk Data*, New York Civil Liberties Union, *available at* https://www.nyclu.org/en/stop-and-frisk-data (last accessed January 17, 2020)

[2] Levine, H. and Siegel, L., $75 Million a Year The Cost of New York City's Marijuana Possession Arrests, Drug Policy Alliance at 4 (March 2011).

convicted of. For example, one client came to our organization seeking legal assistance after he was terminated from his employer of almost twenty years for an arrest that was ultimately dismissed in his favor and expunged. In another case, we had a client who was denied a job in the field he had successfully worked in for over a decade due to an arrest for a violation from 30 years prior. To our client's knowledge, he had a "clean" record as he was never prosecuted or charged with a crime. Although our client explained all this to his potential employer, they never responded to him. Sadly, not hearing again from a potential employer is a frustration that many of our clients face, making it impossible for them to engage in meaningful dialogue to advocate for themselves.

The Millions of New Yorkers Who Have Been Arrested Have Trouble Finding Jobs

Although New York City has protections for people with criminal conviction histories in employment, not all New Yorkers who interact with law enforcement are protected under these laws.

Understanding the racial ramifications of policing, employment limitations on the basis of arrests are unjust beyond a New Yorker's ability to remain outside of the criminal justice system. The federal Equal Employment Opportunity Commission has recognized this issue and released guidance stating that "National data . . . supports a finding that criminal record exclusions have a disparate impact based on race and national origin."[3] Black people experience high levels of policing and, in parallel, high levels of unemployment. Unemployment rates among blacks in New York are nearly twice as high as unemployment rates among whites.[4] The approximately 23% of New Yorkers who identify as Black or African American are disproportionately arrested for all crimes.[5] This is particularly crippling considering the sealing laws of our state which, while continuously expanding, largely still make sealing of certain cases a very limited privilege. In fact, New York does not expunge the great majority of criminal records and the reality is that a simple mistake or misunderstanding can be on a New Yorkers background for a lifetime.

In practice the consequences of policing in our City means that even as unemployment rates have fallen, unemployment remains disproportionately high in the low-income areas

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[3] *Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended*, U.S. Equal Employment Opportunity Commission (April 25, 2012) *and see, e.g., Training and Employment Guidance Letter No. 31-11*, United States Department of Labor (May 25, 2012).

[4] *Current Population Survey Data New York State: 1970 – 2013*, New York State Department of Labor Division of Research and Statistics Bureau of Labor Market Information (July 2014) *available at* http://labor.ny.gov/stats/PDFs/current_pop_survey_data.pdf.

[5] According to the 2010 United States Census, those who identify as Black Non-Hispanic make up 22.8% of New York City's population. *See NYC 2010 Results from the 2010 Census* at 14, Department of Planning, City of New York (March 2011).

of New York City that we serve, particularly in communities of color.[6] For example, unemployment in East Harlem is nearly double that of the citywide average and is almost four times higher than unemployment in the next closest tract, the Upper East Side.[7] Black men continue to experience the highest overall unemployment rate of any group, more than twice as high as unemployment rates among white men.[8] Unemployment rates in New York City mirror the ongoing systemic racism and bias society has promulgated against people of color. Limiting the effects of systemic oppression as reflected in low-income communities of color in New York City is a moral obligation in our efforts toward economic justice and creating a more equitable society. Disenfranchising millions of New Yorkers, especially New Yorkers of color, is wrong and not who we are as a City.[9]

Int. 1314 would continue to expand our present and future clients' abilities to meaningfully contribute to the growth of our city through employment. Even when our constituents are not sentenced to prison time, they are sentenced to poverty through the lack of opportunities available to people with criminal records. Youth in our City are already disproportionately targeted by police but today you can stop the similarly disproportionately disenfranchising stigma of their experiences by enabling New Yorkers to further expand opportunities to acquire and preserve employment.

We thank the City Council for addressing this important issue.

Respectfully submitted,

/s
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[6] *Current Population Survey Data New York State: 1970 – 2018*, New York State Department of Labor Division of Research and Statistics Bureau of Labor Market Information at (February 2019) *available at* https://labor.ny.gov/stats/PDFs/current_pop_survey_data.pdf (last accessed January 17, 2020) (*hereinafter* Current Population Survey).

[7] *See* Furman Center, State Of New York City's Housing & Neighborhoods in 2016 Part 3: City, Borough, and Community District Data at pp. 73-85 *available at* http://furmancenter.org/files/sotc/SOC_2016_Full.pdf (last accessed January 17, 2020).

[8] *Current Population Survey* at 13.

[9] A survey by the U.S. Department of Justice showed 7,379,600 individual offenders in New York State's criminal history file in 2012. *Survey of State Criminal History Information Systems* at Table 2, U.S. Bureau of Justice Statistics (Jan. 2014).

Testimony by Annie Garneva,
Director of Communications and Member Services, NYC Employment and Training Coalition (NYCETC)
at the Committee on Civil and Human Rights
January 22, 2020

Good morning and thank you Chairman Eugene and members of the Council for giving members of the public workforce development community the chance to testify on the career opportunities available to New Yorkers caught up in the criminal justice system.

My name is Annie Garneva, Director of Communications and Member Services for the New York City Employment and Training Coalition (NYCETC). NYCETC supports the workforce development community to ensure that every New Yorker has access to the skills, training, and education needed to thrive in the local economy, and that every business is able to maintain a highly skilled workforce. With over 175 members, NYCETC works with community-based organizations, educational institutions and labor management organizations engaged in New York City workforce development, to improve policy, practices, and outcomes to achieve economic inclusion for the city's workers, job-seekers and employers.

Today NYCETC is here on behalf of our member organizations who provide career services to people with justice involvement. Those include STRIVE, Osborne Association, The Fortune Society and many many others. Approximately a quarter of clients that access the workforce development system in the city have been impacted by the justice system in one way or another. Our members say this is one the biggest barriers to employment faced by their clients, making this legislation and increased investments in targeted programs and services for these New Yorkers all the more important.

Our testimony today will be brief and to the point. **We are proud to support the legislation proposed by Public Advocate Jumaane Williams**, as well as Council Members Adams and Lancman. Our members have made it clear to us that the Fair Chance Act - the existing legislation that would be effectively expanded by the proposed bill - is an important aid to them in their efforts to help justice-involved individuals achieve gainful employment. They have told us that while the Fair Chance Act has been helpful in supporting individuals with convictions, the complexity of the justice system, the sheer volume of New Yorkers that have been impacted by it (but not convicted), and the bias that exists toward anyone that has had any involvement with the criminal justice system at any point in time means that this proposed expansion to cover all New Yorkers is critical in closing some loopholes for discrimination. As we said in our support of the Fair Chance Act before it became law: discrimination against New Yorkers on the basis of a past conviction is still discrimination, and our city

should be working to help formerly incarcerated individuals find employment, not standing in their way.

The same is true for the categories of justice-involved individuals that would be covered by this legislation. People with pending cases, or awaiting dismissal of charges, or with unsealed juvenile records deserve no more to be the victims of fear-based discriminatory hiring practices than those who've been released from incarceration. Expanding our legal protections against employment discrimination to cover them is the right thing to do.

In addition to offering legal protection, passing this bill will also act as another tool to educate businesses in New York about the opportunity to hire qualified, motivated individuals who are unemployed due to justice involvement. Our city's businesses should be encouraged to seek out untapped pools of talent such as this one to help them compete and to support their local community at the same time.

Based on our members' experience in supporting individuals with justice involvement in seeking employment and career growth both prior to the passage of the Fair Chance Act and after its enactment, we have an additional structural recommendation we'd like to emphasize in order to improve the impacts of these laws. As the law stands, employers can examine an individual's criminal justice background after offering a conditional offer of employment; if they deem their history as relevant to the job role and deeming that person unqualified, they must give that person a letter with those specifications and that individual has 3 business days to submit paperwork and arguments contrary to that position in order to continue to be in the running for this job. In practice, however, this 3 day window is too short and leads many people to lose a job that they initially qualified for. While many of our members support their clients by creating a portfolio of relevant documents and talking points that they can use in such situations, this best practice is neither institutionalized nor practiced by people who are not part of a workforce specific program. Though this 3 day window's design was built into the law with the intention of empowering applicants with an accountable timeline it has had the unfortunate unintended consequence of locking many of them out of the very job opportunities it was meant to open up for them. We recommend expanding this period of time within both the Fair Chance Act and this legislation before us, as well as providing more supportive resources and guidelines for social service organizations helping New Yorkers with justice involvement.

I know that you and your fellow City Council Members support the work of the workforce development community broadly, and of the Employment and Training Coalition, and I want to thank you for your continued commitment to working with us to maximize equity in our local economy and career opportunities for those traditionally disconnected from them.

Thank you for your time and consideration of these matters. We at the Employment and Training Coalition would be happy to answer any questions from the Council to the best of our ability, either today or via follow-up with your staff.

Association of Legal Aid Attorneys
UAW 2325 (AFL-CIO)

January 22, 2020

City Council Hearing Intro 1314

Civil and Human Rights Committee

Testimony by:

Association of Legal Aid Attorneys (U.A.W. 2325)

A member of the Decrim NY Coaltion

Jared M. Trujillo, Esq.

President

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Good morning and thank you Chairman Eugene, Public Advocate Williams, and members of the Civil and Human Rights Committee for holding this important meeting. Thank you for giving us the opportunity to speak about how Intro 1314, Fair Chance Act 2.0 will improve worker justice for all, and specifically how it will benefit those with violations that **cannot be sealed** for violating Penal Law § 240.37, Loitering for the Purpose of Engaging in Prostitution, which is colloquially known as the Walking While Trans Ban and Stop and Frisk for Women of Color. My name is Jared Trujillo, and I am the President of the Association of Legal Aid Attorneys, UAW Local 2325 (ALAA). We represent 1500 attorneys, social workers, and other legal workers at 10 non-profits that fight tirelessly for the civil rights and dignity of low-income New Yorkers. Additionally, ALAA is part of the Decrim NY coalition, which seeks to destigmatize, elevate, and empower the most marginalized community members in the sex trade.

To be clear, Penal Law 240.37, Loitering for the Purpose of Engaging in Prostitution, is a constitutionally dubious statute that is used to target innocuous behavior by some of the most marginalized members of mostly black and brown communities. Over 90% of those arrested for this statute are black or brown women, and are disproportionately members of transgender or gender non-conforming communities. This statute is so vague that officers often arrest these women for waving down cabs, waiting for friends, or smoking a cigarette outside. Officers have admitted to targeting women wearing what officers perceive to be tight clothes. In a deposition that was part of a 2016 Legal Aid lawsuit, an officer admitted to looking for women with Adam's Apples when determining who to arrest under the statute. Under this statute, cis and transgender women are subjected to arrests for simply having the audacity to exist in public

spaces. Moreover, almost all of these arrest in New York State happen in only five zipcodes in the poorest parts of the city.

The employment consequences for those with § 240.37 **violations** are particularly pernicious. Under current law, Loitering for the Purpose of Engaging in Prostitution violations are the only violations besides Penal Law § 1192, Driving While Ability Impaired that never sea for the purpose of employment. As a result, someone charged with Loitering for Engaging in Prostitution could be subjected to adverse employment consequences for many years after their offense, for an act that isn't even a misdemeanor. Many of the transgender women targeted by NYPD under this statute already face barriers to employment. Intro 1314 will ensure that they cannot be discriminated against in employment for a violation that is often the result of an innocuous act. Moreover, if people are engaged in the sex trades, Intro 1314 will help protect them from discrimination based on their records, thereby removing a barrier to them finding other employment.

Finally, while Intro 1314 prevents employers from discriminating against those with unsealable violations for employement, it does not prevent them from **inquiring** about unsealed violations. Inquiries can subject those with Loitering for the Purpose of Engaging in Prostitution violations to undo and unnecessary stigma within the workplace. Moreover, enabling employers to inquire about sealed violations that could be years old could enable some employers to unlawfully discriminate against some of the most marginalized community members. To strengthen Fair Chance Act 2.0, we ask that it be amended to prevent inquiries of unsealed violations. This is consistent with the intent of the legislation, and will extend equity in hiring to more New Yorkers.

OUTTEN & GOLDEN LLP

Advocates for Workplace Fairness

WRITTEN TESTIMONY OF OUTTEN & GOLDEN LLP
on
PROPOSED INT. NO. 1314-A, A PROPOSED AMENDMENT TO FAIR CHANCE ACT

January 22nd, 2020
The New York City Council, Committee on Civil Rights
250 Broadway, New York, NY 10007

Good morning. My name is Christopher McNerney, and I am an attorney at the law firm of Outten & Golden LLP. Thank you to the Committee on Civil Rights for holding this hearing and for providing the opportunity to testify.

Outten & Golden is one of the largest firms in the U.S. exclusively representing employees, executives and partners in all areas of employment law. We advocate for individuals' civil rights in the workplace, and we combat worker exploitation and systemic discrimination through class action and impact litigation.

For over a decade, Outten & Golden has been in the trenches advocating on behalf of individuals unfairly denied employment because of their criminal history and working to chip away at the steep barriers to re-entry faced by individuals with records. Examples of our cases include *Gonzalez v. Pritzker*, No. 10 Civ. 3015 (S.D.N.Y.), brought against the U.S. Department of Commerce on behalf of hundreds of thousands of African American and Latino applicants. These individuals sought temporary jobs for the 2010 decennial census and were rejected based on arrest records contained in the FBI database. The case was the first of its kind to achieve class certification on claims of disparate impact under Title VII of the Civil Rights Act of 1964 related to the use of criminal history records. For that litigation and settlement, my colleagues and I received the 2017 Trial Lawyers of the Year award from Public Justice. Our firm also has litigated numerous class actions brought under New York laws specifically protecting against discrimination on the basis of criminal history—on behalf of classes of applicants and employees, as well as organizations such as The Fortune Society and the NAACP New York State Conference Metropolitan Council of Branches.[1] Outside of litigation, we have represented many individuals navigating the complexities associated with finding employment with a criminal history.

We were working in this area prior to the passage of the Fair Chance Act ("FCA") and welcomed its passage. We have seen the real difference the FCA can make for individuals, families and entire communities, and we have also come to understand the ways in which

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[1] *See, e.g.*, *The Fortune Society, Inc. v. Macy's, Inc.*, No. 19 Civ. 5961 (S.D.N.Y); *Mandala v. NTT Data, Inc.*, No. 18 Civ. 6591 (W.D.N.Y.); *Kelly v. Brooklyn Events Center, LLC*, No. 17 Civ. 4600 (E.D.N.Y.); *Millien v. The Madison Square Garden Co.*, No. 17 Civ. 4000 (S.D.N.Y.); *NAACP New York State Conference Metropolitan Council of Branches v. Philips Electronics North America Corporation*, Index No. 156382/2015 (Sup. Ct. N.Y. Cnty.).

employers continue to circumvent its spirit and intent. Our testimony is based on experience gained through such representations and our firsthand view as to the hurdles that employers put into place to prevent compliance with the FCA.

I. The Focus of this Testimony is to Advocate for a Narrower "Intentional Misrepresentation" Standard.

Through this testimony, we seek to comment on proposed Section 8-107(10)(g) of the Administrative Code of the City of New York, which addresses an employer's ability to deny employment to an applicant or employee based on a supposed "misrepresentation" of their arrest or conviction history.

The proposed language ensures that individuals will be provided with "a copy of the documents that formed the basis of the determination that a misrepresentation was made"[2] and "a reasonable time to respond[.]"[3] Such language provides an important corrective to the statute, but we believe it fails to address employers' weaponizing of the "intentional misrepresentations" defense to avoid any and all scrutiny of adverse actions under the FCA.[4] Accordingly, we submit this testimony.

II. Employers Routinely Use the Excuse of "Intentional Misrepresentations" to Avoid Scrutiny of Adverse Actions Under the FCA.

Over the course of many class and individual representations, our firm has observed a disturbing trend whereby employers use the defense that an applicant supposedly "intentionally misrepresented" their conviction history to avoid scrutiny under the FCA. Specifically, many employers require that, as part of the background check process, applicants self-disclose all (or most) of their criminal history when also authorizing a background check. If the applicant then asserts claims (either in court or before an administrative tribunal) alleging that they were unfairly denied employment because of their criminal history, the employer will use any discrepancy between the criminal history self-disclosed and revealed on the background check to claim they are not liable under the FCA. They will argue that such a discrepancy is an "intentional misrepresentation" of criminal history,[5] which removes the individual from the

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2 Proposed Section 8-107(10)(g).

3 *Id.*

4 The proposed language also appears to improperly *lower* the existing standard from "intentional misrepresentations" to *any* "misrepresentations."

5 *See* N.Y. Correct. Law § 751 ("Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee."); N.Y. Admin. Code § 8-107(10)(a) ("It shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to deny employment to any person or take adverse action against any employee by reason of such person or employee having been convicted of one or more criminal offenses, or by reason of a finding of a lack of 'good moral character' which is based on such person or employee having been convicted of one or more criminal offenses, *when such denial or adverse action is in violation of the provisions of article 23-a of the correction law*." (emphasis supplied)), (11-a)(c) ("Nothing in this subdivision shall

protections of the Act.[6] The logic is that a denial for supposed "intentional misrepresentation" of criminal history is not a denial because of "having been convicted of one or more criminal offenses[,]" and thus the employer is not obligated to perform an analysis under New York Correction Law Article 23-A ("Article 23-A") or is otherwise liable under the FCA.

Especially troubling, we have observed that: (i) employers often will only raise the defense of "intentional misrepresentations" when faced with a lawsuit; and (ii) *pro se* litigants are especially vulnerable to this practice and apt to have their complaints of discrimination with administrative tribunals dismissed based on an employer's invocation of "intentional misrepresentations" that is premised on nothing more than a failure to fully disclose the applicant's entire criminal history.

Accordingly, we believe employers' use of the "intentional misrepresentations" defense flouts the FCA's protections and intent, and injures New York City residents with criminal histories who seek gainful employment.

A. The "Intentional Misrepresentations" Defense Prevents Consideration of the Article 23-A Factors.

The FCA was enacted to ensure that "job seekers" are "judged on their merits before their mistakes" and "to level the playing field" for "New Yorkers who are part of the approximately 70 million adults residing in the United States who have been arrested or convicted of a crime."[7] Employers' increasingly common legal strategy of focusing on what information an applicant discloses instead of whether a conviction actually "relate[s] to a job or pose[s] an unreasonable risk"[8] frustrates these goals and serves to keep qualified applicants with criminal histories from suitable employment.

A requirement that applicants completely disclose their criminal history is nothing more than a memory test, is not probative of intent to lie, particularly when applicants are also authorizing background checks and understand that employers will get their records from a third party, and is another hurdle to employment for individuals with criminal histories.

B. When Raising this Defense, Employers Often Do Not Evaluate Intent.

The "intentional misrepresentations" defense is especially troubling because, in our experience, an employer typically will not make any effort to determine whether an applicant truly misrepresented their criminal history. Rather, the employer will simply compare the

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prevent an employer, employment agency or agent thereof from taking adverse action against any employee or denying employment to any applicant for reasons other than such employee or applicant's arrest or criminal conviction record.").

6 *E.g.*, *Millien*, 17 Civ. 4000, ECF No. 40 (Answer) at 1 ("Both [Plaintiffs] . . . failed to disclose criminal convictions on their job application materials. As a result of those failures, neither Plaintiff was eligible to be hired."), 21 ("Plaintiffs' claims under the NYCHRL are barred because the intentionally misrepresented their criminal background.").

7 Section I. Legislative Intent, Fair Chance Act: Legal Enforcement Guidance, available at https://www1.nyc.gov/site/cchr/law/fair-chance-act.page.

8 *Id.*

information an applicant self-disclosed to the information reflected in a background check report, and if it does not perfectly match, make a determination of "intentional misrepresentation."[9]

The reality of applicant experiences is much different, and there are many reasons why an applicant might fail to fully disclose criminal history outside of a supposed desire to mislead the employer. Thus, an inference of intentionality that is derived simply by comparing what an applicant self-disclosed to what a background check revealed is highly problematic.

First, individuals may be unaware of the full extent of their criminal history because they: (i) pled to a crime that is different from the one with which they were initially charged (particularly for an individual who is not incarcerated, it is not always clear whether the disposition of his or her charges resulted in a conviction (or its equivalent) or not); (ii) misremembered older convictions; (iii) failed to understand the differences between felony, misdemeanor, or violation[10] convictions; (iv) did not realize their conviction included multiple, separate offenses; or (v) misstated the full extent or proper phrasing of their criminal history on job applications given the technical and varied terminology present in the criminal justice system.[11] Second, the employer's self-disclosure requirement may itself impede accurate disclosure, because it is either unclear what the employer seeks or requires incredibly broad disclosures. Third, the applicant may nonetheless try in good faith to comply with the employer's requirements by, for example, disclosing their most serious or their most recent conviction—believing, consistent with the FCA, that a background check will then be run and they will be provided with an opportunity to explain the entirety of their criminal history at a later date.

In our experience, employers do not typically account for these nuances when making a determination of "intentional misrepresentations." This is perhaps because employers know that if they deny employment because of a criminal record, they will face scrutiny and potential litigation. But if they deny employment because of supposed "intentional misrepresentations" they may not.

III. Our Proposed Solution.

Respectfully, the proposed amendment to the FCA does not go far enough to address the

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9 *See, e.g.*, *Millien*, 17 Civ. 4000, ECF No. 40 (Answer) at 1, 21.

10 Violation convictions (*e.g.*, as disorderly conduct, unlawful possession of marijuana, and low-level trespassing) are not criminal convictions, *see* N.Y. Crim. Proc. Law § 160.55, but are adjudicated in criminal court. As a result, criminal defendants are typically advised that violation convictions will not appear on commercial background checks.

11 A criminal record is not comprised of a single document. "Information about arrestees, [suspects,] defendants, pre-trial detainees, probationers, inmates, and parolees is recorded in numerous and over lapping files, records, and databases that include: RAP sheets created by police and nationally integrated rap sheet systems; court records; police investigative and intelligence information shared at the local, state, and federal levels; and other private databases[.]" Nairuby L. Beckles, *The Criminal "DNA" Footprint: Viewing the Mark of Criminal Records Through the Legal Lens of the Genetic Information Non-Discrimination Act*, 59 How. L.J. 485, 492–95 (2016).

serious issue of employers misusing the "intentional misrepresentations" defense. While it is important that an employer be required to state "the basis of the determination that a misrepresentation was made" at the time of denial of employment,[12] as drafted there is nothing to limit an employer from overbroad, inconsistent, and illogical determinations of intentionality.

Fundamentally, employers are wielding "intentionality" as a litigation defense to avoid the FCA and its protections for individuals with criminal records. Unless this defense is made less appealing (and scrutinized by courts and administrative agencies), employers will continue to embrace it to excess. Accordingly, we respectfully propose that Section 8-107(10)(g) be amended in the following ways to provide that:

- The employer bears the burden of establishing that an applicant or employee *intentionally* misrepresented their criminal history;
- A determination of misrepresentation of criminal history will be treated as a denial "by reason of such person or employee having been convicted of one or more criminal offenses"; and
- If the employer establishes misrepresentation, it will merely be treated as one factor to evaluate as part of a wholistic review of all the Article 23-A factors.

These modest amendments will go a long way toward minimizing non-compliance with the FCA. By clarifying that employers bear the burden of establishing intentional misrepresentations, employers will be incentivized to collect actual information as to why a person may have failed to fully disclose their criminal history, leading to a fairer system. By treating a denial for "intentional misrepresentation" as a denial because of criminal history, employers will no longer be incentivized to find "intentional misrepresentations" because it will no longer allow them to avoid scrutiny under the FCA. Similarly, by treating a failure to fully disclose as just one factor to be considered along with Article 23-A, it will allow for a fairer review of the entire person. It also will avoid situations where an applicant is denied employment for failing to disclose a conviction that would not otherwise disqualify them from employment.

Thank you again for your time and consideration of this testimony.

Respectfully submitted,

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[12] As discussed, absent such language, employers will often wait to assert this defense until faced with litigation.

NYCDS

Testimony of

Sergio De La Pava

Legal Director

New York County Defender Services

Before the

Committee on Civil and Human Rights

Intro. 1314-2018

January 22, 2020

My name is Sergio De La Pava and I am the Legal Director at New York County Defender Services (NYCDS). We are a public defense office that represents New Yorkers in thousands of cases in Manhattan's Criminal and Supreme Courts every year. I have been a New York City public defender for more than twenty years. Thank you to Chair Eugene for holding this hearing on Intro. 1314-2018, a bill that NYCDS strongly supports because it would extend employment protections to people with non-criminal convictions of violations and open Adjournments in Contemplation of Dismissals.

Intro 1314-2018 is a critical and long overdue reform because millions of New Yorkers have a violation or open ACD on their record. A violation is an offense, other than a traffic infraction, for which jail time in excess of 15 days cannot be imposed. A violation is not a crime and a disposition of a violation does not create a criminal record. An ACD, or adjournment in contemplation of dismissal, allows for a complete dismissal of the charge if the accused person is not re-arrested within a six-month period.[1]

Yet there is widespread confusion among the general public about what a violation and ACD are and whether they constitute a criminal conviction. The short answer is that they do not create a criminal record and people agree to these dispositions in court specifically because they do not. Intro 1314 will clarify this for employers and re-affirm the intended meaning of these dispositions.

[1] N.Y. Criminal Procedure Law § 170.55.

To give you some context, police in New York City arrested nearly 250,000 people in 2018.[2] Of those arrests, 109,516 (43%) resolved with a disposition of a violation or in an ACD.[3] These statistics are only for one year, a year in which arrests are at a historic low.

People with open ACDs frequently experience employment discrimination in the months delay between the disposition and the final dismissal six months later. During that period, the charges appear as a pending case are accessible to the public – including employers. The law already protects workers after their ACD'd case is dismissed, but during the time between the ACD order and the final dismissal, workers are subjected to rampant discrimination that prevents them from maintaining employment and supporting their families.[4]

On a related note, the City must do a better job of educating the public about the possibility of applying for the sealing of past criminal convictions under the somewhat recently enacted Criminal Procedure Law 160.59. The Office of Court Administration estimates that over 600,000 people are eligible for relief under this statute but to date applications number far less than one percent of that. The underutilization of this vital reform leads to unnecessary employment discrimination and is a severe drain on our local economy. The Council should take a leadership role in addressing this shortcoming.

Intro 1314 is a commonsense and long overdue clarification for employers about the nature and intended purpose of ACDs and violations – dispositions that were not intended to saddle people with criminal convictions. We urge you to pass this bill this session.

If you have any questions about my testimony, please contact me at sdelapava@nycds.org.

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[2] New York State Division of Criminal Justice Services, New York City Adult Arrests Disposed (2014-18), available at https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf.

[3] *Id.*

[4] Melissa Ader, Opinion: Loophole means criminal charges set to be dismissed upend lives in NYS, *City Limits,* March 7, 2019, available at https://citylimits.org/2019/03/07/opinion-loophole-means-criminal-charges-set-to-be-dismissed-upend-lives-in-nys/.

Community Service Society | Fighting Poverty Strengthening New York

Testimony by

Estee Konor, Senior Staff Attorney
Community Service Society of New York

Before the New York City Council Committee on Civil and Human Rights

January 22, 2020

Thank you for the opportunity to testify today in support of Int. 1314-A, which would amend the administrative code of the city of New York to prohibit employment discrimination based on arrests pending at the time of employment and pending arrests and convictions that occur during employment.

My name is Estee Konor and I am a Senior Staff Attorney at the Community Service Society of New York ("CSS"). CSS is a nonprofit organization with a 175-year history of excellence in addressing the root causes of economic disparity in New York through research, advocacy, litigation, and innovative program models that benefit all New Yorkers. Several CSS programs provide services to the most vulnerable New Yorkers, including justice-involved individuals. Because having a conviction history substantially undermines an individual's chances of full participation in the community, CSS's Legal Department focuses exclusively on advocacy, policy and litigation approaches to combatting criminal records-based discrimination in employment, licensing, housing and civic engagement. Additionally, CSS's Next Door Project helps more than 600 New Yorkers each year obtain, review, understand and correct mistakes in their New York State and FBI rap sheets. This work helps put individuals with conviction histories in the best position possible as they seek employment, occupational licensing and housing.

CSS supports providing employment protections to New Yorkers facing criminal record-based barriers because of arrests pending at the time of application for employment and pending arrests and convictions that occur during employment:

CSS supports the proposed legislation's amendment to the NYC Human Rights Law to provide employment protections to vulnerable New Yorkers whose record-based barriers to employment were not previously addressed by the NYC Human Rights Law. Under existing law – as amended by the Fair Chance Act – New Yorkers who have a pending arrest at the time of their application for employment and individuals who are arrested for or convicted of a crime during

their employment do not receive the same legal safeguards provided to job applicants who have a criminal conviction at the time of employment. The proposed legislation provides protections to these groups of New Yorkers by furnishing an analytical framework – the Fair Chance Factors – for employers to use when evaluating these situations and specifying the processes they must follow.

The proposed legislation's protections are important because they support the presumption of innocence afforded to individuals charged with crimes by taking steps to reduce the employment consequences of an arrest. Currently, simply being arrested has the potential to upend an individual's life by impacting their ability to maintain employment, keep their housing, and provide care for their children, in addition to many other consequences. The proposed legislation takes a step towards addressing these challenges by ensuring that applicants and employees will not be automatically denied employment or fired from their job simply because they have been arrested. Similarly, proposed protections for employees who incur a criminal conviction during their employment are important because they give individuals the chance to keep their job after a conviction. Individuals who incur a criminal conviction during their employment deserve protections similar to those already provided to job applicants, because they face similar challenges: maintaining employment after a conviction is vital to an individual's ability to build and maintain a stable life for themselves and their family.

CSS supports providing employment protections to New Yorkers whose criminal cases have been Adjourned in Contemplation of Dismissal or sealed, and those adjudicated as Youthful Offenders:

CSS supports the proposed legislation's protections for New Yorkers whose criminal cases have been adjourned in contemplation of dismissal ("ACD") or sealed, and individuals who have been adjudicated Youthful Offenders. This coverage is especially important in ACD cases, where an individual does not plead guilty to any crime; instead, the judge issues an order adjourning the matter for a certain period of time, with a view to ultimately dismissing it completely if the individual does not incur any additional criminal charges during that time period.

Currently, after a matter is adjourned in contemplation of dismissal but before it is dismissed and sealed, employers generally view the matter as open and pending, and treat it as such – terminating employment or choosing not to hire a person otherwise qualified. This undermines the intended benefit of adjourning a case in contemplation of dismissal by forcing the defendant to surmount additional obstacles during the very time period when they have been tasked with avoiding any further charges. The proposed legislation would right this wrong.

CSS strongly urges the City Council to correct an apparent inadvertent error in the proposed legislation's discussion of misrepresentations made by job applicants or employees:

Section 8-107(10)(g) of the proposed legislation states that the protections provided by the statute do not apply to adverse employment actions an employer has taken in response to "misrepresentations" made by applicants or employees. The word "intentional" should be inserted in each instance where the term "misrepresentation" is used, so as to provide protection – as does Correction Law Article 23-A – to individuals who have inadvertently misstated their conviction histories.

The proposed legislation's current language could definitely harm those CSS clients and many other New Yorkers who inadvertently misstate their conviction histories in response to employer inquiries. People make mistakes for a variety of reasons, including that they do not understand their conviction histories (a situation our Next Door Project helps prevent); may mistake arrest charges for conviction charges; may not understand that taking a plea to a charge is the equivalent of a conviction; or may have forgotten convictions that took place long ago or during a period of substance use disorder, homelessness or mental health issues. It is not uncommon for individuals who have had contact with the criminal punishment system to be uncertain about every aspect of their record. Where an inadvertent mistake has been made, applicants and employees should be given an opportunity to correct the information they have provided to the employer. The proposed legislation, as written, could unintentionally serve to punish vulnerable New Yorkers who make genuine mistakes when recounting their conviction histories. CSS urges the City Council to remedy this issue by clarifying that the exemptions provided in Section 8-107(10)(g) apply only to *intentional misrepresentations* made by applicants or employees, which will bring this section in line with Correction Law Section 751.

CSS supports the proposed legislation's application of the Fair Chance Factors to situations not addressed by Correction Law Article 23-A, but we suggest eliminating "evidence of rehabilitation" as a relevant Fair Chance Factor for situations involving pending arrests:

The proposed legislation amends Section 8-102 to add a definition of relevant Fair Chance Factors. These factors provide an analytical rubric that employers must follow in situations not currently addressed by Correction Law Article 23-A. The Fair Chance Factors closely mirror the Correction Law Sections 752 and 753. CSS generally supports the inclusion of these Fair Chance Factors in the proposed legislation. CSS does, however, have concerns about the application of evidence of rehabilitation as a relevant Fair Chance Factor in situations involving pending arrests.

Specifically, we have concerns about including "evidence of rehabilitation" as a factor to be considered in situations involving an employee's pending arrest. First, employee submissions and discussions with employers regarding evidence of rehabilitation could involve employees providing statements or descriptions of the circumstances surrounding their arrest, the incident that led to their arrest, their plans on how to deal with the case, or their self-perception of their culpability in the relevant incident. This would be problematic because it would not only undermine the presumption of innocence afforded to defendants in criminal cases, but it could result in employees making statements regarding their pending cases that could later impact the outcome of their criminal case. The proposed legislation should avoid creating situations where individuals charged with crimes are encouraged to provide statements regarding their pending case to their employers.

Second, the very concept of "rehabilitation" regarding a pending arrest is problematic. Individuals charged with crimes are afforded a presumption of innocence. Given that presumption of innocence, no "wrong" exists that would require any sort of rehabilitation. Even if the evidence of rehabilitation provided by an employee completely avoided any discussion of the circumstances surrounding the pending charges and only addressed the individual's general good conduct in the community, the proposed legislation would have the effect of requiring employees to prove their good standing as community members as part of their effort to maintain their employment. This would have a disproportionate impact on communities of color and other marginalized

communities who are targeted by aggressive policing and arrested at rates that far exceed their representation in the City's population.

In addition to the concerns about the Fair Chance Factors listed above, CSS also suggests that consideration of an individual's age at the time of arrest or conviction be added as a factor. The reason it is important to consider a person's age at the time of arrest or conviction is to highlight the fact that young people should not be held to the same standard as adults when evaluating their contacts with police, prosecutors and courts.

CSS strongly opposes the proposed legislation's dramatic broadening of existing exemptions to address situations where criminal background checks are mandated by federal, state, or local law and urges the City Council to maintain the Fair Chance Act's existing language on this issue:

The proposed legislation appears to significantly expand an existing exemption in the NYC Human Rights Law regarding situations where a criminal background check is required for employment purposes by federal, state or local law. Section 8-107(11-a)(f)(3) of the proposed legislation states that the protections provided in the statute do not apply to any actions taken by an employer with regard to "[a]n applicant for employment or a current employee employed in a *position* for which any federal, state or local law requires criminal background checks for employment purposes or bars employment based on criminal history" (emphasis added). This language exempts any action taken by an employer regarding an applicant/employee for *positions* where a criminal background check is required by law for employment purposes. This exemption is much broader than the existing exemption in the NYC Human Rights Law, which – instead of exempting actions taken regarding certain *positions* for employment – exempted *actions taken by employers pursuant to existing laws* that require criminal background checks for employment purposes (See Section 8-107(11-a)(e) of current NYC Human Rights Law). The existing language exempts employer actions taken pursuant to relevant federal, state or local laws but preserves the employment protections provided by the statute during other parts of the hiring process. The proposed legislation broadens this exemption significantly.

CSS strongly opposes this dramatic change. Exempting employer actions regarding *positions* for which a criminal background check is required by law for employment purposes would have the effect of gutting the NYC Human Rights Law for many low-wage jobs, such as home health workers, security guards, etc. CSS urges the City Council to reject this amendment.

CSS supports providing employment protections to New Yorkers who have unsealed violation convictions, but cautions against unintentionally disadvantaging current employees who have unsealed violation convictions by permitting inquiries into them:

CSS strongly supports providing employment protections to New Yorkers who have unsealed violation convictions. It does appear, however, that employees who incur an unsealed violation conviction during employment have – probably unintentionally – been afforded fewer protections than job applicants who have unsealed violation convictions. CSS offers the following specific comments:

The proposed legislation would repeal Section 8-107(9)(5) and replace it with language that provides protections to job *applicants* who have unsealed violation convictions. Specifically,

that section prohibits employers from making inquiries into applicants' unsealed violation convictions as well as taking adverse employment actions against job applicants because of them. But it does not address current employees. A later section of the proposed legislation – Section 8-107(11)(b) – specifically addresses employment protections to be afforded to *current employees* who have unsealed violation convictions. Section 8-107(11)(b) prohibits employers from taking adverse employment actions against employees because of unsealed violation convictions and other non-criminal offenses but does not address or prohibit an employer making an inquiry into a current employee's unsealed violation conviction. Meanwhile, Section 8-107(11)(a) addresses a similar issue and prohibits employers from inquiring about or taking adverse employment actions for both job applicants and current employees based on non-pending arrests and criminal accusations.

It is important to note that, in New York City courts, individuals convicted of violation-level offenses are generally sentenced to a one-year conditional discharge period. Clerks normally do not seal violation convictions until the end of this period, with the result that individuals may be damaged by inquiries about them – they may be considered "pending cases," though in most every instance no further action or court appearances are required.

CSS recommends addressing this issue first, by amending Section 8-107(9)(5) so that it applies to both job applicants and current employees; and second, by amending Section 8-107(11)(b) so that it mirrors the protections provided by Section 8-107(11)(a) and prohibits employers from both inquiring about and taking adverse employment actions based on unsealed violation convictions.

It is important to ensure that workers who incur a violation conviction during employment are not disadvantaged by employer inquiries into those offenses. Violations are not criminal convictions. An offer to plead guilty to a violation is often made at arraignment on criminal charges, after an individual has been in custody for a period of time and may be suffering consequences as a result of the arrest that may build if they are not immediately released. Individuals will therefore often accept this offer instead of continuing to fight the charges against them so that they can minimize the wide-ranging disruption to their lives. An employer will have already had an opportunity to inquire about an employee's arrest at the time charges were pending. If the case is resolved through a violation conviction, no further inquiry should be permitted – whether or not the matter is sealed.

CSS urges the City Council to engage with CSS and other legal services providers and allocate resources sufficient to provide the public and employers with training and information regarding the complex changes regarding the protections provided to job-seekers and employees in the proposed legislation:

As is detailed above, CSS strongly supports the additional employment protections provided in the proposed legislation. But, the proposed changes are complex and address different types of employment situations, different types of dispositions in criminal cases, different analytical frameworks to be applied in varying situations, and different types of actions employers are permitted to take. CSS is concerned that these changes may be confusing – not only to advocates – but also to employers and workers. If members of the public are not aware of the new employment protections available to them, they will not be able to advocate for themselves or seek out legal assistance when a problem arises. In order to ensure that the proposed legislation actually has the intended positive impact on the lives of vulnerable New Yorkers, CSS urges the City

Council to (a) engage with CSS and other legal services providers and reentry advocates who help low-income New Yorkers overcome barriers to reentry to provide public education regarding the proposed legislation's changes to the NYC Human Rights Law; and (b) and consider allocating funds to these providers and advocates so that they may assist as many New Yorkers as need their services.

New York City Council
Committee on Civil and Human Rights

January 22, 2020
Hearing re: Proposed Int. No. 1314-A

Written Testimony of The Bronx Defenders
By Zoni Rockoff, Law Graduate in the Civil Action Practice

My name is Zoni Rockoff and I'm a law graduate in the Civil Action Practice at The Bronx Defenders. Thank you for the opportunity to testify before you today on this important matter.

The Bronx Defenders ("BxD") is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

Introduction

The Civil Action Practice deals with the countless consequences our clients face as the result of a criminal arrest and prosecution. These enmeshed penalties can range from a loss of employment, to disqualification from housing programs, eviction, loss of financial assistance, loss of property,

and loss of professional licenses. Much of the work we do focuses on assisting people with criminal records in obtaining employment and housing. Many of our clients experience suspensions or loss of employment even from such seemingly favorable criminal dispositions as ACDs and violations. We therefore applaud the Civil and Human Rights committee for extended the Fair Chance Act protections to cover these dispositions, and have a few suggestions to ensure that the language of this bill offers the greatest protections to employees.

ACDs Can Often Result in Suspension or Termination

Int. 1314-A provides much needed relief for people who resolve their criminal cases with an adjournment in contemplation of dismissal (ACD). An ACD can be just as damaging as a more serious charge where a person is awaiting trial or sentence, because an ACD remains open on a person's rap sheet until the case is eventually dismissed. Greater protections are needed to ensure that these dispositions are not viewed by employers in a negative light. As advocates in BxD's Civil Action Practice, much of our time is taken up with advocacy for clients who have received ACDs. This is because an ACD does not result in immediate dismissal, but rather a deferred dismissal. Clients who receive them have their case administratively adjourned typically for 6 to 12 months. The official dismissal and sealing is only reflected on a person's rap sheet at the successful conclusion of this 6 or 12 months without rearrest. Despite the ultimate dismissal of the criminal charges, however, ACDs can result in a number of negative, and often overlooked, consequences.

In the context of a criminal case, an ACD is often an attractive option: stay out of trouble for 6 to 12 months, and the case terminates in your favor and seals pursuant to PL § 160.50. The case is fully dismissed, the outcome the same as if a client proceeded to and won at trial without the uncertainty. For the duration of the 6- or 12-month adjournment, however, the case remains open on a person's rap sheet until that ultimate dismissal, as if the person were proceeding to trial. This can lead to endless negative employment impacts, since employers running background checks only see the open case until the successful conclusion of the 6 or 12 months.

To get a sense of how prevalent ACDs are, 20% of all misdemeanors and felonies in New York State resolved in ACDs in 2018.[1] That statistic is even higher in New York City, where almost a quarter of misdemeanors and felonies were dismissed as ACDs.[2] In 2019 alone, BxD clients accepted almost 3,300 ACDs. For those people who do accept ACDs, virtually every case

[1] NYS Division of Criminal Justice Services, *New York State Adult Arrests Disposed* (2019), https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf.
[2] NYS Division of Criminal Justice Services, *New York City Adult Arrests Disposed* (2019), https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf

results in dismissal; only a tiny fraction of cases result in rescinding of the ACD and reopening the underlying case. Data from the Legal Aid Society indicates that in 2016, 99.4% of accepted ACDs resulted in dismissal, and the 0.6% that did not resulted in a disorderly conduct plea, a non-criminal violation.[3]

These statistics make clear that an enormous number of people in New York City are walking around with open charges on their rap sheets, even though they have already accepted a favorable disposition that will almost inevitably be dismissed and sealed—erased from their record in a matter of months. To private and public employers, however, these cases appear to be open, the only information available suggesting that the person is still being charged with the underlying offense. Employers who see these open charges are much more likely to deny an initial applicant, suspend a current employee, or depending on the severity of the charges, even terminate a current employee. Moreover, open charges also pose a barrier to applicants for public licenses, the majority of which require background checks.

An open ACD is particularly detrimental for people in private employment. If a private employer subscribes to updates from a criminal background check service, they will receive an update when an employee is arrested, or in the case of an applicant, when the applicant is offered a conditional offer and a background check is run. If that employee or applicant has accepted an ACD in their case, the initial arrest charges will be the only information available to that employer and the disposition of an ACD will only appear once the 6 months to a year of "good behavior" are fulfilled. This is incredibly detrimental to clients since employers are likely to see open charges without any additional information regarding the disposition, and suspend or terminate employees as a result of these charges. The same applies to many public employers and licensing organizations, who are automatically notified by the Division of Criminal Justice Services in Albany when an employee or applicant has an arrest or open case. Employees such as security guards, home health aides, and Department of Education employees all require state licensing or approval. The respective agencies are all notified immediately upon a client's arrest, and oftentimes will suspend an employee or deny an applicant based on the severity of the charges against them. For clients who accept ACDs, that information is not available to their employer or licensing agency, merely the fact that the charges against them remain open. This often results in an automatic and prolonged suspension, or an applicants' denial requiring them to reapply for the position once the charges are eventually dismissed.

For example, in our office we work with many employees of the Department of Education (DOE), ranging from paraprofessionals to janitors to after-school instructors. Many of our clients

[3] Melissa Ader, *Opinion: Loophole Means Criminal Charges Set to be Dismissed Still Upend Lives in NYS*, City Limits (March 7, 2019) https://citylimits.org/2019/03/07/opinion-loophole-means-criminal-charges-set-to-be-dismissed-upend-lives-in-nys/.

have been longtime and dedicated school employees, yet an arrest for charges completely unrelated to their employment can trigger an automatic suspension once DOE is notified. Our clients are then left in limbo as they wait for the eventual dismissal to be officially reflected on their rap sheets. In the meantime, they are suspended without pay, and oftentimes must seek public benefits or search for temporary short-term employment in order to support themselves and their family during their prolonged suspensions.

Clearly, greater protections are needed to ensure that these so-called favorable dispositions actually work as intended and do not in fact, prolong a person's suspension from work, or even worse, result in their termination while a person awaits an eventual dismissal.

Violations Also Carry Employment Consequences

Like ACDs, violations are another often-accepted plea that results in a "non-criminal disposition." A violation is not considered a crime, but an offense for which a sentence not exceeding 15 days imprisonment can be imposed. Violations can range from charges such as trespass, disorderly conduct, or loitering. As non-criminal dispositions, the vast majority of violations and traffic infractions seal *immediately* upon sentence, pursuant to PL § 160.50. Once sealed, the charge should no longer be reflected on a person's rap sheet, and, subsequently, should not be visible to public and private employers. Like ACDs, violations are also widely offered and accepted in criminal court: 25% of all misdemeanors and felonies in New York State resulted in non-criminal dispositions (which encompasses both violations and traffic infractions) in 2018.[4] The percentage of cases resolved with a violation in New York City was similar at 23%.[5]

Unfortunately, violation convictions are not always properly sealed pursuant to PL § 160.50. As with any case, the disposition information has to be transmitted from the courts to the Division of Criminal Justice Statistics (DCJS) in Albany. In order for a violation to actually seal on a person's rap sheet, the court must enter the proper code internally and this information must be relayed to DCJS. However, as evidenced by the tireless work of the civil legal advocates in our office to ensure that our clients' rap sheets accurately reflect the outcomes in their cases, this does not always happen. Where a case does not automatically seal, or the error is not caught and corrected, either the violation itself or the underlying charge is still visible to employers. Employers who aren't familiar with the distinctions between violations and criminal dispositions

[4] NYS Division of Criminal Justice Services, *New York State Adult Arrests Disposed* (2019), https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf.
[5] NYS Division of Criminal Justice Services, *New York City Adult Arrests Disposed* (2019), https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf.

can still see these charges and may assume that the employee or applicant still has a conviction or open case.

For example, we have also had clients employed in various city agencies who were informed by their unions that pleas to violations such as disorderly conduct, even though unrelated to their employment, would result in their termination from jobs they have held for years.

Conclusion

Combined, ACDs and violations make up almost half of all case dispositions citywide. Many people facing criminal charges accept these dispositions under the impression that they are favorable or non-criminal dispositions and will therefore not pose a risk to employment. As our clients' experiences show, however, if ACDs still remain open or violations still appear on rap sheets, these dispositions can interfere as much as an open criminal case or finding of guilt as far as employment is concerned. An employer still sees an open criminal case or what appears to be a criminal conviction and may suspend or terminate on this basis; certainly that has been the experience of many of our clients. We applaud the city council for addressing this important matter through Proposed Int. No. 1314-A but feel that several important changes could improve the bill's protections for our clients.

- Firstly, the bill as it currently stands includes language requiring the consideration of "Fair Chance Factors" to be considered for arrests or accusations pending at the time of an application for employment, and arrests or convictions that have occurred during employment. One of the included factors is "any additional information produced by the employee, or produced on their behalf, in regards to their rehabilitation or good conduct, including history of positive performance and conduct on the job or in the community, or any other evidence of good conduct." The inclusion of "rehabilitation" language is unnecessary in the case of employees who have merely been arrested for or accused of a crime: oftentimes there will be no evidence of rehabilitation for these employees to present since the time between an arrest and employer notification can be so rapid. Moreover, expecting employees to be developing evidence of rehabilitation after an arrest when they may still be maintaining their innocence places an unnecessary burden on them. As such, we believe this language in the context of arrests/accusations is unnecessary.

- Secondly, the bill also includes language providing for employers to take "adverse action against an applicant or employee who is found to have made misrepresentations regarding their arrest or conviction history." This language is incredibly broad, and could give employers the leeway to deny applicants or terminate employees for *any*

misrepresentation, however insignificant, and regardless of the applicant or employee's intent. This would require clients to have essentially a perfect understanding of the charges and dispositions on their rap sheets to not accidentally run afoul of this standard - which due to the complexity of reading rap sheets not to mention the passage of time, is an unfairly difficult burden. As such, we believe this language must be more narrowly phrased to avoid giving employers the discretion to deny applicants and employees over the smallest of reporting errors.

This legislation provides an important safeguard to prevent employers from considering ACDs and violations, where people are still awaiting an eventual dismissal or where a violation still appears on their record. We feel that with these changes, the bill can achieve even more in ensuring employees and applicants are fairly considered. Thank you for your consideration of these important matters.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1314-A Res. No. _____

☒ in favor ☐ in opposition

Date: 1/22/20

(PLEASE PRINT)

Name: Melissa Adler, Esq.

Address: 49 Thomas St. NY NY 10013

I represent: The Legal Aid Society

Address: 49 Thomas St. NY NY 10013

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Name: Zoey Chemtob, Senior Policy Council

Address: _____

I represent: NYC Human Rights

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Date: JAN. 22, 2020

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Name: ERIC ENGOLD

Address: 11 PARK PLACE SUITE 1512 NEW YORK, NY 10007

I represent: YOUTH REPRESENT

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Name: Christopher McKenney

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I represent: Dutton & Golden LLP

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Name: Emily Ponder (Williams)

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I represent: Neighborhood Defender Service

Address: 317 Lenox Avenue, 10th Fl, New York, NY 10027

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Name: DANA Sussman, Deputy Commissioner Intergovernmental Affairs & Policy

Address: _____

I represent: NYC Human Rights

Address: _____

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Address: 100 William St.

I represent: New York County Defender Services

Address: _____

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I represent: Brooklyn Defender Services

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Date: 1/22/20

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Date: _____

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