



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

Testimony of Maya Wiley
Counsel to Mayor de Blasio
Intro. 318—Fair Chance Act
December 3, 2014

Thank you, Chair Mealy, Council Member Williams and members of the Civil Rights Committee, for convening today's hearing and inviting me to testify on this important piece of legislation.

The Administration strongly supports the goals of Intro. 318, the Fair Chance Act. In his platform, the Mayor was explicit about his commitment to ensuring more and better employment opportunities for New Yorkers who have previously been convicted of criminal offenses. Removing unnecessary barriers to employment is a critical part of ensuring that all New Yorkers rise together. The Mayor recognizes that connecting formerly-incarcerated individuals to jobs is one of the best strategies for preventing recidivism and supporting families but is also aware that employers too often judge individuals with criminal histories unfairly, refusing to consider them regardless of the type of criminal conviction, how long ago it occurred or whether or not it is connected to the position in question.

The Mayor has also been strongly supportive of City policies requiring agencies to consider an applicant's full range of skills and preventing them from dismissing such candidates out-of-hand. And he has supported the extension of such policies to private employers.

I. Impact of "Ban-the-Box" Measures

So-called "ban the box" measures ensure that New Yorkers with previous convictions have a chance to compete for positions for which they are qualified. This can have a dramatic impact on individuals' ability to secure work that in turn translates into a reduced chance of future involvement with the criminal justice system. We know, for example, that on average, incarceration eliminates more than half the earnings a white man would otherwise have made through age 48 and 44% of the earnings for Latino and Black men, respectively. That amounts to an expected earnings loss of nearly \$179,000 just through age 48 for people who have been incarcerated.¹

¹ See Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility* (2010).

And job seekers are not the sole beneficiaries of such policies. Families also do better when individuals with criminal histories are able to secure stable, quality employment. Interviews with family members of formerly-incarcerated men found that 83% had provided some form of financial support upon the men's return. Half reported that this had resulted in financial challenges and 30%, went further, saying that such obligations resulted in "financial hardships."² Another recent study found that putting just 100 formerly incarcerated people back to work would increase their lifetime earnings by \$55 million, increase their income tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, while saving \$2 million a year by keeping individuals out of the criminal justice system.³ This means that ban-the-box policies generate meaningful benefits for cities and states as well.

States and cities across the country have noted the benefits of such legislation. Thirteen states and over 70 cities and counties have adopted "ban the box" measures. Of those localities, Baltimore, Buffalo, Chicago, Montgomery County, MD, Newark, Philadelphia, San Francisco, Seattle, Rochester, and Washington, D.C. extend those practices to private employers. For all of these reasons, the Administration shares the Council's commitment to putting in place stronger protections for New Yorkers with criminal histories who are seeking employment opportunities. We urge the Committee as it continues to refine the bill, to draw upon the lessons that have been learned in other jurisdictions. And we look forward to working closely with the Council to bring about legislation that advances our shared goals and can be effectively implemented across the public and private sectors.

II. Existing Support Programs

A number of City agencies offer programs designed to increase the chances that individuals with criminal convictions will be able to transition into gainful employment and all its attendant benefits. The Mayor's Office of Criminal Justice, for example, administers a series of contracts with providers who furnish reentry services with workforce development and job-readiness components. The Office has partnered with some of the City's most effective organizations to help individuals with criminal histories to establish stability, reunite with family, achieve greater self-sufficiency and fully reintegrate into the community. These contracts provide services related to career development as well as education and health.

In recent years, The Department of Correction ("DOC") has put into place a series of programs designed to provide people in DOC custody with employment and other supports upon their release. The Individualized Correction Achievement Network or I-CAN, for example, is a cutting-edge reentry initiative designed to reduce recidivism among inmates who are at the highest risk of re-offending. The program serves eligible adult pre-trial New Yorkers during their incarceration and after their release. Program services include work readiness training and job placement, and as part of I-CAN's employment services, participants learn how to interview and discuss their criminal history with potential employers. They also develop resumes, explore career options and meet with job coaches who assist them with finding and keeping jobs.

² See Rebecca Naser and Christy Visher, Family Members' Experiences with Incarceration and Reentry, *Western Criminology Review* 7(2), 2006, 20-31.

³ See National Employment Law Project, http://nelp.3cdn.net/5a46a52e15014e5a4b_23m6b0k40.pdf.

In Fiscal Year 2014, DOC's I-CAN program served a total of 2,408 inmates. There were 473 work readiness workshops serving a total of 3,257 attendees. Some 416 inmates completed workshop cycles. In addition, 488 inmates completed a resume, and 20 inmates found jobs with the assistance of contracted providers.

A second DOC initiative, Workforce 101, prepares inmates at medium risk of recidivating for employment opportunities through job readiness training, including resume and cover letter writing, interview preparation, and goal setting. During their incarceration, participants are introduced to Employment Works, a city funded organization, which exclusively assists individuals with histories of court involvement. Individuals continue to work with Employment Works after release. In FY 2014, this program served 142 participants and placed 19 into jobs. Strive for Success offers pre and post release parenting, case management, cognitive behavioral therapy and employment services including soft and hard skill training to sentenced inmates at medium risk of recidivating with children under 18. In Fiscal Year 2014, this program served 16 inmates and placed 12 people into jobs.

The agency also implements a series of programs that are grounded in assessment of needs in targeted sectors and designed to enhance employability. The Food Protection Course is facilitated by Department of Health and Mental Hygiene instructors and prepares inmates for careers in the food sector following their release. Because all food service establishments – retail and non-retail - must have at least one food protection certified staff member present at all times, successfully completing this course enhances participants' employment prospects. In Fiscal Year 2014, this program served 651 inmates of all recidivism risk levels. Similarly, DOC's CPR First Aid course focuses on emergency treatment techniques that are in high demand. Because there are hazards in several industries that can harm employees and customers, certification in techniques like CPR and use of defibrillators strengthens participants' employability. Over the last year, this program served 161 inmates at medium risk of recidivating.

Finally, the Work it Out program, launched in October of this year, will serve 140 sentenced individuals who are at medium to high risk recidivating. The federally funded green technology training program includes case management, Construction Math, Microsoft Office, Electricity, and Weatherization training, as well as community-based transitional employment. Just as DOC has invested in programs that prepare New Yorkers for re-entry prior to release, the Department of Probation ("DOP") has increased its efforts to expand opportunities and remove barriers to employment for its clients after their release. In addition to operating its core supervision operations, DOP has emerged as a driver of "fair chances" for New Yorkers with criminal histories.

DOP has awarded eight contracts to organizations that advance the goals of Executive Order 151. These include agreements with organizations that will develop "justice-involved" mentorship programs and will match probation clients and other New Yorkers with justice involved backgrounds to full-time, quality jobs with long-term potential. Beyond this, DOP has recently hired nine new staff--out of a total of 12 applicants--with criminal histories. And it has hosted workshops for clients to learn skills, develop strategies and receive help setting and achieving employment goals, including opportunities for individual job development and coaching.

The Administration is proud of all of these efforts. They are emblematic of our commitment to improve employment opportunities and prospects for stability and long-term success for New Yorkers who have been involved with the criminal justice system. It is this same commitment that drives our support for the goals of Intro 318 and our keen interest in working with the Council to develop a highly-effective piece of legislation.

III. Article 23-A & Executive Order 151 of 2011

Before addressing aspects of Intro. 318, I'd like to note some of the policies that currently govern policy and practice in this area. At the state level, Article 23-A of the Correction Law governs statewide legislation governing the employment and licensure of individuals with criminal convictions. The law applies to public and private employers, with some exemptions. It prohibits denial or adverse action with respect to licenses or employment on the basis of prior criminal convictions unless there is either a direct relationship between the offense in question and the license or employment or there is an unreasonable risk to individual or public safety or property. Article 23-A is enforceable against public agencies through Article 78 proceedings and against private employers through the state Division of Human Rights or the New York City Commission on Human Rights. In addition, the Executive Law, another piece of state legislation, includes a series of provisions that echo and complement the Correction Law.

City agency policy and practice with respect to the employment of individuals with criminal convictions is also shaped by Executive Order 151. Since 2011, City agencies subject to the Executive Order have delayed questioning candidates about criminal histories until after an initial interview has been conducted. Under the Executive Order, consideration of such information is limited to felony convictions, unsealed misdemeanor convictions and pending charges. The Executive Order also allows for some flexibility in application, a reflection of its effort to balance multiple policy goals. For example, it allows agencies to petition DCAS for a waiver where the agency can demonstrate need. In addition, the Executive Order includes an exemption for law enforcement agencies and others hiring for law enforcement positions, reflecting public safety concerns.

IV. Concerns Related to Intro. 318

While we agree whole-heartedly with the goals of the Fair Chance Act, the Administration has some concerns about the bill as currently drafted. The first involves the relationship between Intro 318 and Article 23-A of the Corrections Law. Specifically, the Administration believes that language imposing limited look-back periods is preempted by provisions of Article 23-A that require a nuanced, multi-factor analysis prior to a determination in these cases. Similarly, language relating to perjury appears to be preempted by the Penal Law.

In addition, there are other changes that must be made in order to strengthen the bill. For example, while the Administration agrees whole-heartedly that individuals with criminal histories must be supported to compete for employment opportunities, the provisions in Intro 318 that prohibit consideration of criminal history information until after the candidate has deemed the applicant otherwise qualified and is set to extend a conditional offer create serious operational difficulties for private and public employers. Delaying consideration until this late stage will force some agencies that hire for public trust positions to invest heavily in candidates

who may not ultimately prove viable candidates for positions. This can have the effect of jeopardizing staff levels or exacerbating wait times for important services. The private sector has expressed similar concerns. In addition, delaying discussion of criminal history until late stages limits the time within which candidates can obtain certificates of relief or certificates of good conduct to support their applications.

Also of concern is the language in Intro 318 that broadly defines what constitutes an inquiry into an individual's criminal history. As defined in the bill, for example, "any inquiry" includes searches of publicly available records. Because there a number of contexts unrelated to the hiring process in which an employer may wish to search such records, we worry that this could subject employers to liability, even where there is no intention to subvert the goals of the ban-the-box policy.

Finally, we note that policy in this area requires a thoughtful balancing of interests. In the Administration's view, such balancing suggests there may be a role for certain carefully considered allowances for particular employers and licensing entities. The Council has already made such an allowance for cases where law requires that a background check be conducted prior to a candidate being deemed otherwise qualified and is set to receive a conditional offer. However, serious public policy concerns related to public trust and public safety also merit serious consideration. And the Administration is prepared to work with the Council to identify adjustments that may be appropriate.

I thank you, again, for inviting me to speak on behalf of the Administration and look forward to our continued partnership on this important bill.



OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
163 West 125th Street, 5th floor, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

**Testimony of Gale A. Brewer, Manhattan Borough President
On Intro 318 to Prohibit Employment Discrimination
Based on One's Arrest Record or Criminal Conviction
December 3, 2014**

Good morning. My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to Chair Mealy and to the Councilmembers on the Committee on Civil Rights for the opportunity to testify.

I am proud to have co-introduced Intro 318, or the Fair Chance Act, in April of this year with Councilmembers Jumaane Williams, Corey Johnson, and Ritchie Torres. As the name of the bill implies, the Fair Chance Act is intended that all job applicants be considered fairly, whether or not any of them has a prior criminal record. This population faces unique challenges: within one year after release from incarceration, 60% remain unemployed.

Let me start by telling you the story of Gregory Taylor. Gregory is in his late forties and has lived in New York City for many years. He is a skilled construction worker. Both before and during his years in prison, he has acquired substantial skills and experiences in many areas of construction work. Gregory is a certified iron worker, having completed an apprentice program in 1985. He has also obtained certificates and licenses in steel erection, crane signaling, and rigger operation. Since his release in 2011, he completed a 30-hour OSHA training. Gregory is a problem solver. He is a team player. He is always proactive in improving himself. In short, Gregory Taylor is an ideal job candidate.

Unfortunately, New York City lost this ideal construction worker to Newark, NJ because this East Harlem resident was not able to find a job. This is not for lack of trying: in addition to working with a job placement coach at Exodus Transitional Community, a nonprofit organization that provides re-entry support to the formerly incarcerated, Gregory also participated in a 10-week intensive training that equipped him with job search skills ranging from interview best practices to networking. He joined a union and went to multiple construction sites to look for a job. He even branched out and started applying to administrative positions outside of the construction field, willing to take on any position to get himself back on his feet.

But at the end of the day, Gregory must compete with hundreds of workers who do not have a criminal record. Over the summer, he relocated to New Jersey, where in August of this year, the state became one of the latest jurisdictions to adopt similar legislation to the Fair Chance Act before us today. When he moved, Gregory wasn't sure if he would be able to find a job right away. But he believed that the new law would open doors to people like him, and the opportunity was promising enough for him to relocate to Newark.

The City Council has the opportunity to keep skilled workers in New York City by passing the Fair Chance Act. In fact, New York City's biggest employer, the City of New York, essentially already does this. Executive Order 151, issued in August 2011 by former Mayor Michael Bloomberg, prohibits City agencies and human services contractors from asking if a job applicant has been convicted of a crime until after the first interview. Since implementing Executive Order 151, the percentage of City new hires with criminal records nearly doubled between the end of 2012 and the end of 2013, rising from 11.9% to 23.4%, according to information provided by the NYC Department of Citywide Administrative Services. The increase is the highest among job seekers under the Work Experience Program, which helps economically vulnerable New Yorkers, including those with criminal records, to secure job placements and work toward self-sufficiency.

I would like to emphasize that both Executive Order 151 and the Fair Chance Act are meant to expand the chance of employment for workers who are *already qualified* for the positions they apply for. The City hired those 23.4% of candidates with criminal records because they could do the job. Similarly, private employers do not have to consider unqualified job candidates under the Fair Chance Act because each company's regular hiring process already has protocols in place to screen out those who do not qualify. What the Fair Chance Act does is to level the playing field so that those with a criminal record can be considered for a position among other *equally qualified* candidates.

As Gregory's example shows, inmates often acquire valuable skills that are desirable to employers. Many of them complete GEDs, Bachelor's and even Master's degree while on the inside. Some become experienced food handlers; others learn carpentry. Still others have worked as clinical aides inside psychiatric rehabilitation centers in partnership with the NYS Office of Mental Health. And participants enrolled in New York Theological Seminary's Master of Professional Studies program at Sing Sing Correctional Facility gain fundraising and event coordinating experiences by organizing an annual community food drive for the homeless in partnership with local pantries and nonprofit organizations. These are desirable potential employees with competitive market skills. The Fair Chance Act ensures that they are not overlooked during the hiring process simply because they have to check a box.

Over the past several weeks, Councilmember Jumaane Williams and I have met or spoken with members of New York City's business communities, including the Bronx, Brooklyn, Queens, and Staten Island Chambers of Commerce (we are meeting with the Manhattan Chamber of Commerce next week); the Caribbean American Chamber of Commerce and Industry; Partnership for New York City; the Haitian American Business Network; and various business owners. I can honestly say that none of the business stakeholders I have spoken with objects to the intent of the bill in giving those with a criminal record a fair chance.

The businesses' concerns are mostly centered around expediency and potential legal liability. I understand their concerns. Yet I would say that the Fair Chance Act does not impose the burden of paperwork or the need to re-interview a new pool of candidates as long as an employer decides to hire the candidate that he or she likes. As for concerns for increased legal liability, if the nature of a job does indeed prevent an employer from hiring a

candidate with a criminal record, then the written explanation required under the Fair Chance Act will in fact function as a safeguard against legal action, since the explanation will clarify the reasons for withdrawing the offer and demonstrate that denial is not due to discrimination.

Additionally, I have reached out to San Francisco and both the State of Massachusetts and the City of Boston to find out how implementation of their respective fair chance policies are faring. We wanted to learn from Boston's experience in particular because the CORI law that Boston implemented in 2006 is very similar to our Fair Chance Act: banning the box, no criminal history inquiries until after a conditional offer is made, and a look-back period that is the same as what is proposed under the Fair Chance Act.

I and my staff spoke with enforcement agencies, chambers of commerce, business associations, research institutions, and advocacy groups. We learned two key lessons from other jurisdictions: 1) both San Francisco's and Massachusetts' business communities have expressed the same concerns when their respective version of the Fair Chance Act was first proposed, and 2) once implementation began, none of the enforcement officers, chamber leaders, or research specialists we interviewed has received any opposition from businesses against their locality's fair chance laws.

In fact, the greatest concern expressed among Massachusetts' businesses is the desire for more outreach and education on their state's equivalent of the Fair Chance Act, the CORI Reform. This sentiment was expressed to my staff when we reached out to the Greater Boston Chamber of Commerce and the Retailers Association of Massachusetts; it is also a finding reported in a study conducted by The Boston Foundation and the Crime and Justice Institution on the impact of the CORI Reform two years after implementation.

Extensive outreach and education is something that I am committed to providing for New York City's business communities to successfully implement the Fair Chance Act. I will work with the five borough chambers, business associations, advocacy groups, and other partners to disseminate clear and culturally appropriate education information about the Fair Chance Act to businesses of all sizes.

Thank you again for the opportunity to testify before you today. I am honored to have introduced the Fair Chance Act with my colleagues in government and I urge all City Council Members to vote in favor of Intro 318.

**Written Comments of Inner City Tech
New York City Council
Meeting of the Committee on Civil Rights
December 3, 2014**

Good afternoon. My name is Angel Gairrido, and I am the Director of Programs and Public Relations at Inner City Tech (ICT). ICT is a non-profit organization that is in the pre-launch phase, but we expect to be operational next year. In this role, I will help ICT students develop world of work skills that will assist them with finding employment. I would like to thank the Council for the opportunity to testify. I hope that my testimony will inspire you to give people like me and thousands of others a fair chance of securing employment. About 1 in 4 adults have some type of criminal record. I represent the voices of the people that are often discriminated against just because of a mistake we've made in the past.

I am here today because when I was 18 years old, my brother, who was only 14 at the time, was stabbed 24 times, they broke his jaw, and shot him in the chest at point blank range. This horrific act was carried out by a gang of twelve men right outside of my apartment. The gang members that did this to my brother were not satisfied and proceeded to threaten the lives of my wife, new born son, and my younger brother. I was young and afraid for my family. The odds were stacked up against me, so I did everything in my power to protect my family. My actions got me convicted of second degree murder and criminal possession of a weapon; I would spend the next 20 years in jail.

There is no question in my mind that if I had to do it over again, I would take my family and run away from New York. I lost everything when my sentence was handed down. My younger brother Richie lived because of god's good grace, but my wife left me and my children grew up without a father. While in prison, I picked up the pieces of my life and began to rebuild myself. I began to organize incarcerated people to demand better educational programs for the

residents in Attica, Auburn, Clinton, Elmira, Great Meadow, Shawangunk and Sing Sing state prisons. My peers saw me as a leader and elected me the Vice President of Latino Unidos Organization and later I would be re-elected as President. In addition, I became intimately involved in the Restorative Justice Foundation project which theory emphasizes repairing the harm caused through a cooperative process that includes all stakeholders.

Upon leaving the prison system I had a slim to none chance of finding gainful employment with my type of record. I was left to my wits and sheer determination to survive. My first job out of prison came as a result of pure determination and luck. In 2002, I asked my Parole Office, Mr. Roach, for assistance. He introduced to one of STRIVE's recruiters and I began taking job readiness and attitudinal training classes. On August 2002, I graduated from STRIVE and I began working with the organization as maintenance worker on September 9th 2002. Within 3 months of being hired, I was given more responsibility and promoted to trainer. I continued to grow in the organization and began teaching classes to formerly incarcerated youth. My students found it difficult to find work, but were very artistically gifted. I encouraged them to launch their own business and one young lady now owns a makeup business, works at NBC news, and is a real-estate agent. Other students have successful created their own businesses in photography and tattoo parlor. On March 5th 2005 I left STRIVE.

In April of 2005, a friend of mine who worked at Sherland and Farrington warehouse shared some of the issues his work place was having. I developed a plan to save the company money, walked into the job site and asked to speak to the manager of the warehouse. I presented the manager with a plan that would save him money by managing the inventory better, and was hired on the spot. Later, when my record would come to light, I was informed that the company does not hire ex-felons. I had proven to the manager that I could do the job and that my past

mistake shouldn't keep me from saving him money and me earning an honest living. To which he agreed and I was relieved. I started as a warehouse worker and shortly promoted to assist warehouse supervisor 6 months after my start date.

I worked for almost 2 years at Sherland and Farrington before leaving the Company in 2007. On July of 2007, I was recruited by STRIVE and came back to teach at some of the biggest classes the organization has had since 2002. My orientations had 100 to 125 people in attendance. My classes ranged from 85 to 98 students. The graduation rate for my classes ranged from 56 to 48 throughout my employment at STRIVE, which ended on Oct. 25, 2011. My employment with STRIVE ended as a result of a disagreement between co-workers which lead to my illegal dismissal.

I've been unemployed since October 2011 even though I've applied to 3 - 5 jobs on a weekly basis. I am being locked out from securing a job just because I have a record. The passage for the Fair Chance Act will provide an opportunity for thousands of people support themselves, feed their families, and pay taxes. Now is the time for the City Council to act on this important issue and rectify the injustices that discrimination based on a criminal record has had on thousands of people. It is time for an end to this discrimination. Thank you.

**Testimony of The Legal Aid Society
In Support Of City Council Intro. 318**

December 3, 2014

**GIVE PERSONS WHO HAVE BEEN ARRESTED OR CONVICTED
A FAIR CHANCE TO REBUILD THEIR LIVES**

My name is Amy Hong, and I am a staff attorney with The Legal Aid Society's Civil Practice's Employment Law Unit where I represent low-wage workers in their legal claims against their current or former employers. My colleague Robert Newman is a staff attorney with The Legal Aid's Criminal Practice, where he advises attorneys and their clients of the often unintended "hidden consequences" that flow from arrests and convictions. We appreciate the opportunity to come before you today in support of City Council Intro. 318, the Fair Chance Act, which builds upon existing state and city laws meant to prevent unfair job discrimination against the hundreds of thousands of New Yorkers who encounter the criminal justice system each and every year.

The Legal Aid Society is the oldest and largest legal services provider for low income families and individuals in the United States. Annually, the Society handles more than 300,000 cases and legal matters for low income New Yorkers with civil, criminal and juvenile rights problems, including some 46,000 individual civil matters in the past year benefiting nearly 116,000 New Yorkers as well as law reform cases which benefit all two million low-income families and individuals in New York City.

Through a network of ten neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low-income individuals. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance for community organizations.

Through our Employment Law Unit, we provide legal services to thousands of low-wage workers each year to ensure these workers receive fair wages, fair treatment, decent working conditions, and the benefits to which they are entitled if they lose their jobs. Most of these cases involve unemployment insurance, wage and hour violations, and workplace discrimination, including discrimination based on past involvement with the criminal justice system.

The Society's Criminal Practice serves as the primary defender of poor people prosecuted in the State court system, under our contract with New York City. Our hundreds of lawyers are on the front lines in arraignment parts every day and handled more than 220,000 cases in the last year. Well over half of our clients are charged with misdemeanors or petty offenses, and a large share of these clients are young persons of color, whose neighborhoods bear the brunt of especially intensive law enforcement by the Police Department. Time and again, we see these clients lose their jobs and lose opportunities for career advancement merely by reason of having been arrested, punishments more severe than the actual sentences imposed by judges. Time and again, applicants for entry-level positions are thrown on the discard pile simply because they

have arrest or conviction records, without even a chance to be interviewed and prove that they deserve an opportunity. This is why the Fair Chance Act is so important, and so necessary, if we wish to be a City where everyone who's willing to work has a chance to climb the ladder of success.

Intro. 318 contains several significant provisions that expand existing law prohibiting employment discrimination based on criminal history.

INTRO 318

One set of provisions, known as "Ban the Box," has been adopted in a number of other states and cities. Former Mayor Bloomberg promulgated a similar order governing municipal employment.¹ Intro. 318 would expand "Ban the Box" to private employment. Specifically, the bill provides that an employer may neither ask an applicant about his criminal history, nor conduct a criminal history search --- either by a search of public records or through a commercial credit-reporting agency --- until the employer has deemed the applicant qualified and has extended a "conditional offer of employment," *i.e.*, an offer conditioned on the results of the background check. If the background check causes the employer to withdraw the offer, the employer must provide the applicant with a copy of the results of the inquiry as well as a copy of the employer's analysis pursuant to Article 23-A of the Correction Law, which requires an employer to weigh various factors including but not limited to the nature of the job, the nature of the conviction, the recency or remoteness of the conviction, and the applicant's evidence of rehabilitation, before using the criminal record as a basis to deny employment. At that point, the applicant must be given an opportunity to respond, and the employer must hold the position open for at least 7 days, pending the applicant's response.

CURRENT PROBLEM

These new rules are necessary because the existing prohibitions against job discrimination by reason of criminal history have proven difficult to enforce. If an employer is permitted to ask for an applicant's criminal record at the outset of the application process, the employer may, and usually will, reject the applicant with a criminal record without giving a meaningful reason, despite the applicant's qualifications. It is often difficult to prove that the criminal history was the reason for rejection. Likewise, it is difficult to determine whether the employer made a good faith effort to evaluate the factors that state law requires it to evaluate under Article 23-A of the Correction Law.

"Ban the Box" is necessary to assure that employers truly obey the legal mandate to offer equal opportunity to persons with criminal records, unless there is a genuine relationship between the job duties in question, or, it would unreasonably endanger the public interest to hire the applicant. When it is established under the provisions of Intro. 318 that the applicant would have been hired but for his record, and the employer has explained why the record is deemed a disqualifier, then the Commission on Human Rights, and a reviewing court, will be able to assess whether the employer's hiring practices are lawful.

¹ Executive Order No. 151, Mayor Michael R. Bloomberg, Consideration of Criminal Convictions in Hiring dated August 4, 2011

THE PROPOSAL INCENTIVIZES COMPLIANCE

The provision requiring an employer to hold a job open until the applicant has a chance to explain why his criminal record should not disqualify him is a critical part of the bill. Legal Aid's employment lawyers have succeeded in representing clients by arguing that an applicant was qualified in spite of an arrest or conviction history, only to be told that the job was gone because someone else has been hired or a civil service list expired, thereby further delaying the client's reentry to the workforce. Seven days is a modest and reasonable length of time to afford the applicant a chance to explain the circumstances of his criminal record to the employer, or explain that the background check report is erroneous, or that the applicant has overcome addiction or illness that led to his criminal justice involvement.

The Fair Chance Act also establishes a new rule that once 10 years have passed since the applicant was sentenced or released from prison (whichever is later) after a felony conviction, or 5 years have passed after a misdemeanor conviction, that conviction is to be disregarded in evaluating the applicant's qualification for employment or licensing. This is appropriate because academic studies have established that once a person has lived a law-abiding life for this length of time, the risk of his or her committing a new offense is no greater than the risk that any random person will commit an offense.² The new rule will not only simplify the application of the law by creating a bright line rule, it will also ensure that persons who have committed indiscretions or mistakes well in the past will not have their records held against them for life, long after they have matured or rehabilitated into citizens who are fully integrated into society. And, when we consider that Police tactics cause persons of color to be disproportionately arrested when compared to their actual crime rates, the new rule will do much to redress the unjustified economic inequality that flows from these Police tactics.

Another valuable provision of Intro. 318 is that it will not only protect applicants for employment who have arrest histories, it will extend protection to persons who are arrested while currently employed. The bill would not prohibit firings or other discipline if an employee is convicted of a crime, but it would require employers to use the same careful, multi-factor analysis that the law already requires with respect to new applicants who have a criminal record. Of course, an employer may sensibly consider a new conviction to reflect more negatively on the employee than an old, pre-employment offense, but there is no reason why current employees should have no protection at all. Unionized and civil service employees already have contractual or legal protection against arbitrary firings, whether based on convictions or otherwise. Lower-paid, struggling workers deserve such protections as well. Legal Aid has seen too many workers lose their jobs automatically, forcing them to start over in a difficult job market, because of relatively minor offenses that had nothing to do with the job and don't fairly reflect on the worker's ability to continue working competently and honestly. This is extremely disruptive to our clients' lives and the loss of a job often leads to the loss of basic needs such as housing.

The bill's provision for damages of at least \$1000 to be awarded to persons aggrieved by violators of these rules is a useful incentive to assure compliance with the law, as is the

² Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences by Alfred Blumstein and Kiminori Nakamura, November 2012

stipulation that the Human Rights Commission may presume a violator of the “Ban the Box” rules to be guilty of an “unlawful discriminatory practice” unless the employer is able to prove otherwise.

ADDITIONAL SUGGESTIONS

There is one respect in which the bill could be made still more effective. Currently, a number of City agencies, most notably the Department of Education which employs or licenses tens of thousands of people, considers a case to be “pending” even after the defendant receives an Adjudgment in Contemplation of Dismissal (ACD). Because these agencies suspend workers without pay immediately upon receiving automatic electronic notification, from the Police, of an employee’s arrest, and because persons with “pending” criminal cases are not protected under the anti-discrimination laws, these individuals are stripped of their livelihood for six months or a year, the normal duration of an ACD, even after the prosecutor has determined that the case does not warrant prosecution and has thus offered an ACD. This is deeply unfair when one considers that, while an ACD is technically “pending” in that the case may be restored to the calendar and prosecuted, 98% to 99% of ACD’d cases end in routine dismissal without further prosecution.

One example of this problem is our client A.C., a mother of two young children, who was raised in and lives in NYCHA and worked as a caretaker at NYCHA. Ms. C. was arrested and suspended from her job. She then received a marijuana ACD, but when she showed her supervisor the disposition of the case she was immediately fired and when she re-applied for the position, after the case was dismissed and sealed, she was not re-hired because of her arrest.

The current system actually creates a perverse incentive to plead guilty to a petty offense, so that the case will be over and the employee may be reinstated, when the employee would be able to obtain complete dismissal if he waited for six or twelve months. This unfairness may be remedied by an amendment to this bill, or by separate legislation, that directs City agencies not to consider a criminal action as “pending,” for employment purposes, once an ACD has been ordered. Certain agencies like the Department of State, which licenses security guards, already reinstate licensees after an ACD, with no apparent risk to the public safety.

An additional, technical amendment might clarify that when the law, both existing and proposed, refers to “criminal offenses,” it includes petty offenses, such as Disorderly Conduct and traffic infractions, which are not “crimes” but are still prosecuted in the criminal courts and can, at least in theory, result in job discrimination. The Commission may already so interpret the law but a clarification might help avoid potential future litigation over this issue.

CONCLUSION

In conclusion, we thank and applaud the sponsors of this important legislation, and urge its passage by the Council. All New Yorkers deserve a fair chance to support themselves and their families. This bill will help them to get it.

Respectfully Submitted:

Robert Newman
Staff Attorney
The Legal Aid Society
Special Litigation Unit
199 Water Street, 6th Floor
New York, New York 10038
V(212)577-3354
rnewman@legal-aid.org

Amy M. Hong
Staff Attorney
The Legal Aid Society
Employment Law Unit
199 Water Street, 3rd Floor
New York, New York 10038
V(212)577-3626
amhong@legal-aid.org

My name is Wayne Speed and The Legal Aid Society's Employment Law Unit represented me in a lawsuit against the NYC Transit Authority because I was denied employment based on my criminal record.

I want to share with you my personal experience as a victim of discrimination based on a criminal record. Approximately 3 years ago, I was placed as an intern with the NYC Transit Authority to work as a cleaner, cleaning NYCTA stations and subway cars, as part of the Human Resources Administration "Work Experience Program" otherwise known as WEP. I was scheduled to work Mondays, Tuesdays, and Wednesdays from 9:00 am - 5:00 pm. I did not receive pay from NYCTA for my work as an intern, but received public assistance from HRA instead. The position of a cleaner involves: cleaning subway cars by sweeping, mopping, wiping clean the seats, poles, windows and doors of the car and removing litter and cleaning subway stations by sweeping the platforms, mezzanines, stairways and escalators, removing trash from the trash cans, and wiping clean the turnstiles, metro card swipe machines and metro card machines. This is an entry level, non-skilled position. There is no formal education requirement for the position and I was not required to take an exam for the position.

As a WEP intern, I was told by NYCTA that I could get a full time job if I met certain program requirements, had perfect attendance, and received good performance evaluations, which were given every 90 days. While I was an intern with NYCTA, I always had outstanding performance evaluations, ranging from scores of 97 to 100 percent, had near-perfect attendance, and received a positive job recommendation from a supervisor.

Since I had been performing all of my job duties as a cleaner for *over a year* and had met all of the eligibility requirements for full-time paid employment, I was asked by NYCTA to apply for a full-time paid position as a cleaner with NYC Transit Authority. I was given a Pre-Employment application packet to fill out at home and was told to obtain copies of all of my criminal court dispositions so that they could be reviewed when I was scheduled to submit my Pre-Employment application at NYCTA's offices.

On or about February 5, 2013, I was scheduled to have lab tests done, including urinalysis, and to submit the Pre-Employment application packet for full-time employment. In the Pre-Employment application, I disclosed my complete criminal history. The application did not request any additional information concerning my criminal conviction history, including evidence of rehabilitation. When I submitted my Pre-Employment application at NYCTA, including my criminal court dispositions, an NYCTA employee told me that my paperwork would be given to management, and I was asked to take a seat.

I was not called to complete lab tests that day. Instead, when my name was called after submitting my Pre-Employment application and criminal dispositions, I was told by a NYCTA employee that they would be in touch with me by phone or mail. I was not asked to explain my conviction record, nor was I offered the chance to submit any additional documentation beyond the disclosure of previous convictions required in the application package. I was not asked to submit any information showing proof of rehabilitation. When I left, I was not scheduled to complete my lab tests or to otherwise meet with NYCTA staff again.

The next day, I contacted NYCTA via phone to ask about the status of my application for employment because I had not been allowed to proceed with the application process. I was then told

that my application had been turned over to management for further review and I would receive a call or letter regarding my application for employment. However, I received no further communication from NYCTA until after I filed an Article 78 Petition against NYCTA. It was not until NYCTA submitted their Answer that they gave me an explanation for the denial of my employment application.

Despite my demonstrated ability to successfully perform the job functions during my year-long internship, NYCTA explained that upon the review of my Pre-Employment application, my application for full-time employment was denied on the basis of my criminal record, lack of evidence of rehabilitation, and NYCTA's lack of confidence that I could "work unsupervised responsibly and respond well to the riding public."

I went to The Legal Aid Society and the Employment Law Unit argued that that I was qualified for the job, that my prior convictions (which resulted from my former abuse of drugs) did not have a direct relationship to the job duties and responsibilities of a NYCTA cleaner nor did they pose a safety risk to the riding public. NYCTA agreed to reconsider my employment application. The Legal Aid Society helped me gather all of my evidence of rehabilitation. After NYCTA's review of my rehabilitation evidence, I was offered a full-time paid position as a NYCTA cleaner as of last Wednesday, November 26th. It has been nearly 2 years since I have been denied employment for a job that I was qualified to do just because of my criminal convictions. The Fair Chance Act will make a tremendous impact on those who are qualified for employment but discriminated against because of criminal records because it will allow applicants the chance to fight for the job at the time of application instead of through years of litigation in the courts.

Thank you for your time today and I urge you to pass the Fair Chance Act.

Testimony of
Tsedeye Gebreselassie
National Employment Law Project

In Support of New York City Fair Chance Act

Before the
New York City Council, Committee on Civil Rights

Hearing on New York City Fair Chance Act
File # Int 0318-2014

December 3, 2014



Tsedeye Gebreselassie
Senior Staff Attorney
National Employment Law Project
75 Maiden Lane, Suite 601, New York, New York 10038
212.285.3025 ext. 314
tsedeye@nelp.org

Thank you to Chair Mealy and to the members of the Civil Rights Committee for the opportunity to provide testimony today. My name is Tsedeye Gebreselassie and I am a Senior Staff Attorney at the National Employment Law Project. I am honored to testify in support of the New York City Fair Chance Act. With our key coalition partners VOCAL-New York, Community Service Society, Faith in New York and 32BJ SEIU, NELP is a lead organizational co-sponsor of this legislation.

The National Employment Law Project (NELP) Promotes Workers' Rights

Over forty-five years ago, NELP was founded to promote the employment rights of the working poor and unemployed. Today, NELP is one of the nation's leading voices promoting employment policies that deliver on the nation's promise of economic opportunity. From our main office here, in New York City, and from locations throughout the country, we shape model employment policies at the local, state and national levels through empirical research, legal and policy advocacy, and building alliances. One of our focus areas is to reduce employment barriers for people with prior arrests and convictions.

NELP has been a leader in the national movement for fair chance hiring reforms, commonly known as "ban the box." We have had the privilege of working on dozens of successful fair chance campaigns and providing expertise to support this legislation across the country. Through a national lens, we will highlight the relevant best practices and the most effective components of fair chance bills that have been developed, tried, and tested.

Collateral Consequences Exact a Heavy Toll, But Jobs Turn Lives Around

NELP estimates that there are 70 million U.S. adults with arrest or convictions—or about one in three adult New Yorkers.¹ The "box" on a job application is a barrier to jobs because it has a chilling effect that discourages people from applying. It also artificially narrows the applicant pool of qualified workers when employers toss out applications with the "box" checked, regardless of the applicant's qualifications or relevancy of the conviction to the job. Both the employer and job applicant lose out. Research affirms that having a criminal record reduces a call-back for a job applicant

¹ There are an estimated 100,596,300 subjects ("individual offenders") in the state criminal history files within the fifty states, American Samoa, Guam and Puerto Rico. U.S. Dept. of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (Jan. 2014) at p.2, available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. In New York, there are 7,379,600 subjects in the state criminal history file. *Id.* at Table 1. To account for duplication (individuals who may have criminal records in more than one state), NELP conservatively reduced the numbers cited in the survey by 30%. The U.S. Census 2013 population estimate for New York residents that are 18 years and over was 15,411,151. *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States: April 1, 2010 to July 1, 2013*, U.S. Census Bureau, Population Division (June 2014), available at www.census.gov. Using these estimates, there are approximately one in three adult New Yorkers with a criminal record on file with the state of New York.

by 50 percent.² When candidates answer “yes” to the conviction question on a job application, they are marked with a modern-day scarlet letter.

Persistent joblessness translates into economic losses with far-reaching consequences. One study found that lowered job prospects of people with felonies and formerly incarcerated people cost the U.S. economy between \$57 and \$65 billion in lost output in 2008.³ At the individual level, serving time reduces annual earnings for men by 40 percent,⁴ meaning families too often fall into a poverty trap.⁵

Conversely, new job opportunities for workers with prior records could translate into economic benefits for all. A 2011 study found that securing employment for just 100 formerly incarcerated people would increase their combined lifetime earnings by \$55 million, increase their tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, all while saving more than \$2 million annually by keeping them out of the criminal justice system.⁶

Clearing the path to employment for people with prior records not only can boost the local economy, but it can also significantly increase public safety. Stable employment has been found to be a significant factor in reducing the likelihood of reoffending.⁷ One study found that a 1 percent drop in the unemployment rate causes between a 1 to 2 percent decline in some offenses.⁸

The National Movement for Fair Chance Hiring Reform

Fair chance hiring helps to lift the stigma of the “record” and allows a person's skills and qualifications to come first. Momentum for the policy has grown exponentially, particularly in recent years. Just in 2013 and 2014, eight states passed legislation. Today, there are 13 states and over 80 U.S. localities across the country that have removed the conviction history question from the job application and delayed background checks until later in hiring.⁹ Tallying the populations in the states and local

² Devah Pager, “The Mark of a Criminal Record,” *American Journal of Sociology* 108(5), 2003: 937-975, available at http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf.

³ John Schmitt and Kris Warner, “Ex-offenders and the Labor Market,” Washington, D.C.: Center for Economic and Policy Research, (2010) available at <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

⁴ Bruce Western and Becky Pettit, “Collateral Costs: Incarceration’s Effect on Economic Mobility,” Washington, D.C.: The Pew Charitable Trusts, (2010) available at http://www.pewtrusts.org/uploadedFiles/Collateral_Costs.pdf?n=8653.

⁵ John Tierney, “Prison and the Poverty Trap,” *The New York Times* (Feb. 19, 2013) at p. D1, available at <http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&r=0c>.

⁶ “Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,” Philadelphia, PA: Economy League of Greater Philadelphia (2011) available at http://economyleague.org/files/ExOffenders_Full_Report_FINAL_revised.pdf.

⁷ “Safer Foundation Three-Year Recidivism Study, 2008,” Chicago, IL (2008) available at <http://saferfoundation.org/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>.

⁸ Steven Raphael and Rudolf Winter-Ebmer, “Identifying the Effect of Unemployment on Crime,” *The Journal of Law and Economics*, University of Chicago Law School 44, (2001) available at <http://www.istor.org/stable/10.1086/320275>.

⁹ NELP, *U.S. Cities, Counties, and States Adopt Fair Hiring Policies to Reduce Unfair Barriers to Employment of People with Criminal Records*, (Nov. 2014) available at <http://www.nelp.org/page/-/SCLP/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf?nocdn=1>.

cities and counties with ban-the-box, more than 100 million Americans—or one-third of the U.S. population—now live in a jurisdiction with a fair hiring policy.

The breadth of support for fair chance speaks to its commonsense appeal. Policymakers from both sides of the aisle are including fair-hiring laws as part of a “smart on crime” agenda to reduce criminal justice spending and increase public safety. In neighboring New Jersey, Governor Chris Christie signed state legislation applying to private employers. He stated: “Today we are also going further to reform our criminal justice system by signing legislation that continues with our promise and commitment to give people a second chance.”¹⁰

Federally, the U.S. Equal Employment Opportunity Commission (EEOC) endorsed removing the conviction question from the job application as a best practice in its 2012 guidance reaffirming that federal civil rights law regulates employment decisions based on arrests and convictions.¹¹ The Obama Administration’s My Brother’s Keeper Task Force also gave the movement a boost when it endorsed hiring practices “which give applicants a fair chance and allows employers the opportunity to judge individual job candidates on their merits.”¹²

The Fair Chance Act is consistent with state law, New York Correction Law Article 23-A, and with federal law, Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e *et seq.* In fact, it helps ensure that employers are in compliance with these prohibitions against employment discrimination based on prior convictions and arrests.

Today, with the addition of three states in 2014, there are 13 states representing nearly every region of the country that have adopted the policies: California (2013, 2010), Colorado (2012), Connecticut (2010), Delaware (2014), Hawaii (1998), Illinois (2014, 2013), Maryland (2013), Massachusetts (2010), Minnesota (2013, 2009), Nebraska (2014), New Jersey (2014), New Mexico (2010), and Rhode Island (2013). Six states—Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, and Rhode Island—have removed the conviction history question on job applications for private employers.

In addition to these six states, Washington D.C. and 22 cities and counties now extend the fair chance policy to government contractors or private employers. Of these localities, Baltimore, Buffalo, Chicago, Montgomery County, Newark, Philadelphia, San Francisco, Seattle, Rochester, and Washington D.C. extend their fair chance laws to the local private employers.

¹⁰ State of New Jersey, Office of Governor, “We’re Giving People a Second Chance by Banning the Box,” Gov. Chris Christie (Aug. 11, 2014) available at <http://www.state.nj.us/governor/news/news/552014/approved/20140811g.html>.

¹¹ U.S. 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.* (April 25, 2012), available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

¹² My Brother’s Keeper Task Force Report to the President (May 2014) at p.10, available at http://www.whitehouse.gov/sites/default/files/docs/053014_mbk_report.pdf.

Features of a Robust and Effective Fair Chance Act

New York City has the benefit of the significant experience from cities and states across the nation to shape a fair chance hiring ordinance that is both robust in its coverage, but also in its implementation.

- **Limiting Criminal Record Inquiry Until After a Conditional Offer of Employment:** The NYC Fair Chance Act limits criminal history inquiries until after the employer has decided to extend a conditional offer of employment. This is consistent with NELP's best practices recommendations for an effective fair hiring policy. In addition, this point of threshold inquiry is aligned with the EEOC's recommendations and the policy regulating most applicants for federal employment.
- **Limiting Lookback Period for Conviction Inquiry:** The legislation limits criminal record inquiries to felonies in the last 10 years and to misdemeanors in the last 5 years. Massachusetts' state law, enacted in 2010, has a similar lookback period (10 yrs for felonies; 5 yrs for misdemeanors). The rationale for a lookback period goes to the heart of fair chance policy reform. An unquestioned assumption is that the existence of a criminal record is an indicator of work performance. However, no research has correlated the existence of a prior criminal record with negative work behavior or with the commission of offenses in the workplace.

Indeed, an arrest record even has limited predictability of one's likelihood of being rearrested. Over time, the risk of re-arrest fades to the likelihood of arrest for the general population.¹³ For this reason, a limited lookback period is consistent with current research. Because an old record fails to predict negative work behavior there is little to be gained in the hiring process by revealing it; yet if the dated conviction is disclosed, it carries a stigma that is challenging for a worker to overcome. Other policies with lookbacks include Hawaii's state law (10 yrs), San Francisco's Fair Chance Ordinance (7 yrs), and Newark's local ordinance (8 yrs for felonies; 5 yrs for misdemeanors).

- **Notice and Right to Respond:** Under the legislation, the employer must provide the applicant with a copy of the background check, provide the analysis of the individualized assessment based on job-relevancy of the criminal record, and permit the applicant a reasonable time to respond—prior to an adverse action. These steps are consistent with federal consumer protection law (the Fair Credit Reporting Act), which requires that applicants receive a copy of the

¹³ Alfred Blumstein and Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47(2), 2009: 327-359, available at http://www.search.org/files/pdf/Redemption_Blumstein_Nakamura_2009Criminology.pdf.

commercial background check and have the opportunity to correct any inaccuracies prior to an adverse action. Consistent with the EEOC guidance, this process will also allow an applicant to provide any evidence of rehabilitation or mitigating factors to explain why he or she should not be disqualified from the position.

- **Effective Enforcement:** In order to ensure there is effective implementation and enforcement of the NYC Fair Chance Act once it becomes law, we urge adopting a robust outreach and education plan directed at workers and employers; developing a strategic enforcement plan that includes not only a complaint-driven approach, but also agency-directed investigations and the collection of research and enforcement data; providing penalties that meaningfully deter violations; and cultivating strong partnerships with other government agencies and community-based organizations.

The NYC Fair Chance Act Can Become a National Model

The momentum for fair hiring reform at the state and municipal levels has accelerated at a record pace in recent years. Yet, even with the recent exponential growth of these policies, we cannot underestimate the impact that a comprehensive NYC Fair Chance Act will have on the national movement. The passage of strong legislation here will not only benefit millions of New York City's families, but will also be a catalyst for policy reform throughout the country. Millions of Americans struggling to find work will finally have a second chance.

**TESTIMONY OF LAWRENCE A. MANDELKER on behalf of
THE NEW YORK METROPOLITAN RETAIL ASSOCIATION (NYMRA) before the
COMMITTEE ON CIVIL RIGHTS**

Chair: Hon. Darlene Mealy

Wednesday, December 3, 2014, 10:00 a.m.

Council Chamber, Committee Room

City Hall New York, NY 10007

NEW YORK CITY COUNCIL PROPOSED INTRO NO. 318

**Prohibiting Discrimination Based on
One's Arrest Record or Criminal Conviction**

Chair Mealy and members of the Committee: I am testifying today on behalf of the New York Metropolitan Retail Association. NYMRA is an organization of national chain retailers operating in the City of New York. Thank you for receiving my testimony.

Correction Law Article 23-a defines as discriminatory any adverse action with respect to employment against persons previously convicted of one or more crimes unless there is a direct relationship between the specific employment being sought and one or more of the crimes OR if the granting or continuing of employment would involve an unreasonable risk to the property, safety or welfare of specific individuals or the general public.

Intro 318 arbitrarily expands the definition to now include either inquiring about prior convictions or even stating that there will be an inquiry until after a conditional offer of employment has been extended, regardless of whether the response would justify denial of employment under Article 23-a.

Depending on their positions, dishonest employees can; a) sell or misuse customer and co-worker credit card numbers; b) sell customer social security numbers to identity thieves; c) be paid to compromise the integrity of an employer's digital firewall, or; d) take a kick-back when procuring goods or services for the employer. The need for NYMRA's members to protect themselves, their employees and their customers from dishonest employees is palpable. Background checks are a significant line of defense.

That being said, an applicant's disclosure of prior convictions on the initial application can result in not even being called in for an interview. That's why most Ban the Box bills defer the ability to ask about criminal convictions from the initial application to either at or after the initial interview. NYMRA would not oppose such a bill.

Not every applicant is called in for an interview. The qualifications that result in an applicant being interviewed and (hopefully) a good interview are

factors in favor of hiring that will be balanced and weighed against any factors against being hired that may arise out of any prior criminal conviction(s).

There is a financial cost associated in discovering a criminal record later in the hiring process. The balancing of factors required by Article 23-a should occur before a job offer is extended, whether conditional or not. Intro 318 ignores that cost. It not only would prohibit an employer from inquiring about prior convictions until after a conditional offer has been extended. It would prohibit an employer from even stating until after the extension of a conditional offer, that the employer reserves the right to conduct a criminal background check.

If an employer were to make a premature inquiry or statement about prior convictions, an applicant's response could not be used to deny him or her employment even if its substance justified denial of employment under Article 23-a. To add insult to injury, the employer would be liable to the applicant for damages of up to \$1,000 and be presumed to have engaged in an unlawful discriminatory practice.

Finally, the balancing test under Article 23-a is a defense against a negligent hiring suit brought by someone damaged by a dishonest employee. Unlike Article 23-a, Intro 318 would exclude felony convictions more than ten years ago and misdemeanor convictions more than five years ago from the test. Lawyers will have a field day litigating whether the defense is compromised and whether plaintiffs have a claim over against the City.

Intro 318 is not just a "Ban the Box" bill. That's why NYMRA opposes its adoption.

Submitted by Lawrence A. Mandelker
Kantor|Davidoff
(Kantor, Davidoff, Mandelker Twomey Gallanty & Olenick, P.C.)
415 Madison Avenue, 16th Floor
New York, NY 10017
Ph: 212-682-8383; Fx: 212-949-5206
Email: mandelker@kantordavidoff.com



**Testimony of Vie Mae Richardson White
SEIU 32BJ Member
In Support of Intro 318
The New York City Fair Chance Act
December 3, 2014**

Hello Chairwoman Mealy and councilmembers.

My name is Vie-Mae Richardson White and I am a SEIU 32BJ member. I have been a member for 27 years, working as a commercial office cleaner.

I am here today to speak about the importance of the Fair Chance Act and why it is personally important to me and my family.

As a union member, I know just how important it is to have a good quality job. Without good pay and benefits, I don't know how I would have been able to raise a family here in New York City.

I fear that my daughter will not be able to do the same. My daughter has a criminal record. In 2004, she was convicted of a drug charge and was released from prison in 2009.

Since coming out, she started going to school to become a medical assistant. But her advisor told her she would not be able to get a job as a medical assistant because of her criminal background so my daughter dropped out of the program.

Recently, she lost her job working in a warehouse because of her criminal record. She has applied for a lot of jobs, but the only people who call her back are employers that offer low wage, seasonal jobs.

This has had a big effect on my daughter. After getting let go, she fell into a deep depression.

When she came over for Thanksgiving I got to see just how big of an impact this was having on her. She really feels like there is no room for her to rebuild her life and become a contributing member to her community. She feels like she has no more options left, but she does not want to turn back to crime or depend on public assistance.

My daughter has a lot to offer the world. Employers should see her for who she is and not label her as a felon before she gets a chance to show what she has to offer.

As a mother, it breaks my heart to see my daughter living like this. She does not live in New York City anymore, she lives in Schenectady and I know that this law will not help her get a job outside of the city. But I know that New York City can be a leader in the state. If New York passes a law here, other towns and cities will do the same.

I urge you to take on this leadership role and pass the Fair Chance Act now.

Testimony: New York City Council, Committee on Civil Rights

Good morning, my name is Heather Garretson and I appreciate the opportunity to speak on the importance of the Fair Chance Act. This Act ensures that qualified applicants for a job in New York City will be considered for the job based on their potential, not their past.

As part of my research as a law professor, I sit across from people with criminal histories and listen to what happens when they come home. And this is what I hear: I need a job.

Here is an example of someone whose life may have been different had the Fair Chance Act been law when he came home.

This is a guy who's been in and out of prison since his teens. After his most recent release, he had nowhere to go so he lived in shelter – which was his plan until he got a job. He spent 13 months applying for jobs – and 13 months hearing “no.” At one point he considered going back to prison because it would be better than being unemployed and living in a shelter. Then, finally, someone gave him a chance. He got a job cleaning buses. He arrived at work an hour early every day – which was an hour before the garage even opened. He spent the next 6 months cleaning buses, working overtime, and doing extra work around the garage. He was promoted. He now opens the garage. He makes enough money to split an apartment and is taking his commercial driver's license test. He is succeeding because he was given a fair chance.

The hard thing about doing research in this area is that you meet people who leave the system full of hope. They come home with skills, plans, and promise. And all of that slowly leaks out with every “no” they hear from prospective employers.

One in four adults has a criminal record. That is a problem. Being unemployable for life due to that record is a bigger problem for both an individual and society.

We know that access to employment that helps reduces recidivism. Jobs give purpose.

And income. And hope. And that's more than fair.



Working Families Party
2 Nevins Street
Brooklyn, NY 11217
(718) 222-3796

TESTIMONY ON INTRO 318

**JANEL QUARLESS, LEGISLATIVE MANAGER
NEW YORK WORKING FAMILIES**

NEW YORK CITY COUNCIL COMMITTEE ON CIVIL RIGHTS

Wednesday, December 3, 2014, 10:00am

Thank you Chairwoman Mealy and members of the Committee for the opportunity to testify today. My name is Janel Quarless and I am the Legislative Manager for Working Families. We are a growing political organization that fights for an economy that works for all of us by running aggressive campaigns to raise standards for working families while electing the next generation of progressive leaders.

Working Families fully supports the effort to enact the Fair Chance Act in New York City. This is a question of racial and economic justice. People of color are disproportionately impacted by mass incarceration and the prison industrial complex more broadly. While all New Yorkers face an employment crisis, only 47% of working age Americans currently have full time jobs¹ with Black unemployment still nearly double that of whites.² The Fair Chance Act levels the playing field for employment. By disallowing questions about applicants' prior criminal histories ahead of a preliminary

¹ "Only 47% of Working Age Americans Have Full Time Jobs," Business Insider, <http://www.businessinsider.com/real-employment-rate-47-percent-2011-1>, (January 24, 2011)

² *The State of Working New York 2013: Workers Are Paying a High Price for Persistent Unemployment*, Fiscal Policy Institute, <http://fiscalpolicy.org/wp-content/uploads/2013/08/SWNY-2013.pdf>

offer, the bill could eliminate some of the racial and ethnic discrimination people with criminal records persistently face.

This is not just an issue of individual fairness. Job barriers bleed out local economies while undermining the well being of communities. Inevitably, taxpayers wind up subsidizing people who face structural barriers to employment as they are often forced onto public assistance programs. Let's provide re-entrant populations the opportunity to fully contribute to the building of a sustained tax base where they live. We know that increasing access to decent employment is paramount to not only improving lives, but cutting recidivism and stabilizing communities that are impacted by mass incarceration.

A strong private sector ban the box law adds to the growing movement nationally to address biased policies that lead to mass incarceration. As it stands today, 13 states and 70 cities and counties have enacted legislation to "Ban-The-Box" policies. The New York City Council has the chance to pass the strongest law yet to be enacted anywhere in the United States. It is time to end the contradictory catch-22 that criminal record holders ought to fully rehabilitate themselves while placing massive stumbling blocks at every single turn. Therefore, we strongly urge this committee to pass the Fair Chance Act as is to ensure that those who are qualified have a chance to show that they are qualified.

Thank you.

**TESTIMONY BY ANGELINA GARNEVA, POLICY AND COMMUNICATIONS ASSOCIATE OF
THE NEW YORK CITY EMPLOYMENT AND TRAINING COALITION**

**TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE
ON INTRO. 318, THE FAIR CHANCE ACT**

December 3, 2014

Good morning and thank you so much for agreeing to hold this New York City Council hearing on Int. No. 318, otherwise known as the Fair Chance Act, the local law which would amend the administrative code of the City of New York in relation to prohibiting discrimination based on one's arrest record or criminal conviction.

My name is Angelina Garneva, Policy and Communications Associate for the New York City Employment and Training Coalition (NYCETC). NYCETC is an association of over 200 community based organizations, educational institutions, and labor unions that annually provide job training and employment services to over 750,000 New Yorkers, including public assistance recipients, unemployed workers, low-wage workers, at-risk youth, individuals involved with the criminal justice system, immigrants and the mentally and physically disabled. The Coalition is the only citywide association exclusively focused on workforce development.

Stable employment is one of the most effective ways of preventing recidivism among individuals involved with the criminal justice system and lowering rates of criminal activity. To achieve this we need to make criminal background checks more targeted, fair and thus affective. Such checks *can* promote safety and security at the workplace in the right situations but prove to be discriminatory when applied in a blanket fashion. Employment is a key tool in the effort to decrease recidivism rates and formerly incarcerated individuals deserve the opportunity to present their abilities like all other applicants.

As providers of training and employment services that work to connect New Yorkers to quality employment, our members are on the frontlines of the unemployment crisis which continues to stifle our communities and economy. In working with individuals involved with the criminal justice system to help them achieve economic security and self-sufficiency for themselves and their families, one thing rings clear - discrimination is persistent and hidden. Discrimination does not show itself and offer a potential for resolution; rather it remains hidden behind unanswered calls, unviewed applications and stifled job opportunities. There are no statistics that we can give on how often this occurs because silence cannot be easily measured. Knowing that employer discrimination exists, workforce providers may intentionally avoid sending applicants in the direction of specific industries or occupations because of the reputation of discriminatory hiring practices in said industry. Instead, the workforce professionals we represent find themselves stuck between a rock and a hard place when attempting to seek employers who will give a fair chance and opportunity to all applicants, including those with a history in the criminal justice system.

Helping employers find the strongest fit for their workplace is a fundamental part of the work of workforce providers. Employers who automatically eliminate prospective hires without a real and honest consideration of their skills, abilities, and attributes lose out on a resource that could strengthen their business even as they offer meaningful opportunities to formerly incarcerated men and women. This means that passage of the Fair Chance Act would not only help jobseekers who face discrimination, but would also help employers and workforce service providers better fill their staffing needs with the most qualified and skilled individuals.

The barriers created by discrimination have a high economic cost on our overall society. According to a 2010 study by the Center for Economic and Policy Research (CEPC) on formerly incarcerated individuals and the labor market, the diminished employment prospects of such individuals has a significant impact on our economy by diminishing productivity, economic output and payroll taxes. This study found that in 2008 the U.S. economy lost the equivalent of 1.5 to 1.7 million workers, or roughly a 0.8 to 0.9 percentage-point reduction in the overall employment rate, due to the unemployment and under-employment of individuals involved with the criminal justice system. CEPC estimates that this resulted in a loss of output of \$57 to \$65 billion nationally.¹

Individuals involved with the criminal justice system face stigmatization from employers when attempting to enter the labor market, leading to a cycle of higher levels of unemployment and therefore reentry into the prison system, hence contradicting the notion of reform through prison time. New York City parolee information shows that black and Hispanic males are rearrested at far higher rates than any other demographic in society thus increasing the chances of discrimination within the labor market if one's clean record serves as a prerequisite for employment purposes before evaluating all of the other potential qualifications for the individual's fit for the job position.

Additionally, over 10 states have enacted some version of Fair Chance law, with four states applying their laws directly to all public and private employers (Hawaii, Massachusetts, Minnesota, and Rhode Island). Over 60 cities and counties also abide by such policies with Buffalo, Philadelphia, San Francisco and Newark ensuring that they cover private employers as Int. 318 would do.

NYCETC and its members support Int. 318 as legislation which would not only reduce further barriers to employment for individuals with criminal records who have already paid their debt to society but also open up the field of employment placements for workforce providers who assist such individuals.

Thank you for this opportunity,

Angelina Garneva

Policy and Communications Associate
New York City Employment and Training Coalition

¹ Schmitt, John, and Kris Warner. "Ex-offenders and the Labor Market." *Center for Economic and Policy Research*. 1 Nov. 2010. Web. <<http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>>.

TESTIMONY OF THE LEGAL ACTION CENTER

ON BEHALF OF THE ATI AND REENTRY COALITION

City Council Committee on Civil Rights
Hearing on the Fair Chance Act
A proposal to prohibiting discrimination based on
an arrest record or criminal conviction

December 3, 2014

Presented by

Sebastian Solomon
Policy Associate
Legal Action Center

Endorsed by

Center for Alternative Sentencing and Employment Services (CASES)
Center for Community Alternatives (CCA)
Center for Employment Opportunities (CEO)
Correctional Association
EAC TASC
Fortune Society
Greenhope Services for Women
Legal Action Center
Osborne Association
Women's Prisoner Association

Good Afternoon. My name is Sebastian Solomon. I am a Policy Associate at the Legal Action Center. I appreciate the opportunity to address you today.

The Legal Action Center is the only public interest law and policy organization in New York City and the United States whose sole mission is to fight discrimination against and protect the privacy of people in recovery from drug dependence or alcoholism, individuals living with HIV/AIDS, and people with criminal records. The Center works to combat the stigma and prejudice that keep these individuals out of the mainstream of society. The Legal Action Center helps people reclaim their lives, maintain their dignity, and participate fully in society as productive, responsible citizens.

We also run a national center to promote the employment of individuals with convictions, the national H.I.R.E. network. H.I.R.E.'s goal is to increase the number and quality of job opportunities available to people with criminal records by changing public policies, practices and public opinion. H.I.R.E. has worked for the last four years to serve as a national clearinghouse for information and technical assistance for non-profit and government agencies working to improve employment prospects for the formerly incarcerated across the country. Additionally, H.I.R.E. has worked to help states and other jurisdictions around the country to enact similar legislation to the Fair Chance Act.

In New York State, we work closely with the coalition of Alternative to Incarceration (ATI and Reentry) and related programs (pre-trial services, defender based advocacy, client specific planning, community service sentencing, drug treatment diversion programs, TASC, legal and employment assistance). These programs divert appropriate individuals who have been arrested or convicted to community supervision and sanctions and thereby protect the public and save the state enormous

sums of money by reducing prison costs, preventing recidivism and stabilizing these individuals and their families.

We present these comments on behalf of the ATI and Reentry Coalition:

The proposed legislation not only increases fairness by providing individuals with criminal records expanded opportunities to reenter society after they have paid the legal consequences of their crime, it also increases public safety by increasing access to employment and other societal benefits for these individuals. Time and again, research has demonstrated that a key factor in preventing recidivism is access to employment. This bill increases access to employment in a number of ways, including by opening new doors to jobs for individuals with convictions and encouraging individuals with conviction histories to believe that it is worth it applying for gainful employment, in part by removing a question which leads so many applicants to assume that they will be denied the moment they reveal their criminal record.

The proposed legislation concerns how and when employers are able to ask individuals about their criminal record and run background checks, as well as ensuring that employers provide applicants with a fair opportunity to challenge incorrect information about their record and/or providing the individual with an opportunity to demonstrate that they deserve the job in spite of their record. Despite what many people say or believe, this legislation does not prevent an employer from asking about a criminal record or running a background. It merely delays when the question is asked in order to ensure that individuals are not judged solely on the basis of their criminal record when an employer is making a hiring decision.

This legislation is necessary because, as noted by the Equal Employment Opportunity Commission in its 2012 guidance (and repeatedly demonstrated through research), “an employer is more likely to objectively assess the relevance of an applicant’s conviction if it becomes known when the employer is already knowledgeable about the applicant’s qualifications and experience.” Giving someone an opportunity to present his or her credentials, education, experience, skills, and other relevant evidence of their rehabilitation is the ultimate goal of this policy. The benefit of giving someone such an opportunity was highlighted in recent research which found a seven-fold increase in the proportion of individuals offered employment by the city of Durham in the four years following the city’s passage of Ban the Box for municipal jobs.

As of September of this year, 13 states, nearly 70 cities and counties, and several major corporations had adopted some version of ban the box policies. New York City already restricts the timing of questions about an individual’s criminal record on applications for most municipal jobs, under an Executive Order issued by former Mayor Bloomberg, an order that could be rescinded at any time. However, most individuals are not applying for municipal jobs. They are applying for jobs in the private sector and so they are not impacted by Mayor Bloomberg’s order. Furthermore, the proposed legislation provides many other protections not provided by the Executive Order. It does not require that individuals be given a clear explanation for why they were denied a job (as they are entitled to under Article 23-A of the New York State Correction Law), it does not provide the same clarity about what kinds of inquiries and background checks must be delayed, nor does it delay these elements until after a conditional offer has been made.

In addition to delaying the timing of an employer's questions about a criminal record, the proposed legislation also ensures that an individual is given a proper opportunity to challenge incorrect information on a background check. Such a requirement already exists under the federal Fair Credit Reporting Act. However, this bill provides much greater clarity for defining the "reasonable time period" required by the federal law. Lastly, the proposal limits how far back employers can go in considering criminal record information. This essential element recognizes that the best predictor of whether an individual will commit a crime is the fact that he or she has recently committed crime. In fact, there have been a number of recent research reports that have shown the decreased likelihood of an individual committing another crime over time, with individuals with prior convictions becoming no more likely to commit a new crime than members of the general population after a certain period of time has elapsed.

New York City and State already have some of the strongest, most progressive protections against discrimination based on a criminal record. However, these laws have not proven sufficient to preventing employment discrimination against individuals with criminal records. The City and State Human Rights Laws already bar employers from asking about or considering information about arrests that did not result in a conviction, information about arrests that resulted in a youthful offender adjudication, and information about convictions that have been sealed. Additionally, Article 23-A of the New York State Corrections Law bars employers from denying an individual a job or firing them on the basis of a criminal record unless either there is a direct relationship between the previous criminal offenses and the specific job the individual is applying for or the granting or continuation of the employment would involve an unreasonable

risk to property or to the safety or welfare of specific individuals or the general public. Article 23-A also states that it is “The public policy of [the State of New York]...to encourage the licensure and employment of persons previously convicted of one or more criminal offenses” and requires employers considering an applicant with a criminal record to take a number of factors into account when making an employment decision, including how old the person was at the time of the conviction, how long ago the conviction was, and what the individual has done since the time of the conviction. However, demonstrating that the reason an individual was denied a job was because of their criminal record can be very difficult. Employers often deny that this is the reason for the decision and it can be extremely challenging to prove otherwise.

The Council’s proposal will still not prevent employers from refusing to hire someone because of their criminal record. It will simply make it easier to ensure that their reasons for doing so are legal under State and City law and will allow those who have been illegally denied opportunities to successfully reenter society and compete on a level playing field for a job to challenge their denial and obtain the compensation they are entitled to. It will also help ensure that Article 23-A’s stated goal of “encourag[ing] the licensure and employment of persons previously convicted of one or more criminal offenses” can be more fully realized.

I thank you for this opportunity to speak and hope that you will enact this important legislation, which is in line with state and city law and will allow New York to maintain its role as a progressive center and a place of fairness.



The Fortune Society
BUILDING PEOPLE, NOT PRISONS

**TESTIMONY OF
THE FORTUNE SOCIETY**

The New York City Council

Committee on Civil Rights

RE: A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record or criminal conviction.

December 3, 2014

Presented by: Barry Campbell

The Fortune Society
29-76 Northern Blvd.
Long Island City, NY 11101
Phone: 212-691-7554

Good Afternoon. My name is Barry Campbell. I am testifying today on behalf of the Fortune Society, but I would like to first start by thanking the various Councilmembers and the Committee for convening this important hearing on City legislation that would prohibit discrimination based on one's arrest record or criminal conviction. I would especially like to thank the Committee for allowing The Fortune Society ("Fortune") an opportunity to testify.

I'd like to share with you a bit about Fortune's history. In 1967, David Rothenberg produced the off-Broadway play "*Fortune and Men's Eyes*." Written by John Herbert, a formerly incarcerated playwright, the play captured the experience of people living in prison. Since its founding shortly after the off-Broadway play, Fortune has served as a primary resource for New Yorkers released from jails and prisons seeking to build constructive lives in their communities; it now serves some 5,000 men and women with criminal justice histories annually. All of our programs are designed and implemented to meet the unique needs of this population through skilled, holistic and culturally competent assessments, and appropriate service provision. We build an initial relationship with clients that fosters trust and safety to begin the healing; often a crucial prerequisite to providing service for people with justice involvement; this is further reinforced by the degree to which our staff reflects many shared life experience of our clients. Approximately 50% of our staff are themselves either formerly incarcerated and/or in recovery. We believe in the importance of this cultural competency; however, it is this same cultural competency, specifically, the narratives told by our staff and clients regarding their experience within solitary confinement units across New York City and State, that allows us a deeper understanding of the degradation and inhumanity experienced in such settings. As such, we started the David Rothenberg Center for Public Policy (DRCPP) seven years ago to "officially" utilize this unique understanding of the criminal justice system to shape and inform humane policy and practices.

First, I would like to share my own personal story as a formerly incarcerated person who has directly experienced discrimination in the hiring process and who has also benefited from employment when given the opportunity to demonstrate my value as an employee.

In the late 1990s, several years after I had been released from incarceration, I applied for a job at the NY Post as a payroll administrator. During the interview, I performed so well that they offered me the job on the spot! Then, **they conducted a criminal background check and told me that they couldn't hire me because of my criminal conviction.** I was devastated. I had been back in society and working in various jobs for several years at that point, but I really wanted to break into the private sector, so I could make a living wage. After that experience, I never tried to get a job in corporate America again.

However, my experience as an employee at the Fortune Society has been incredibly positive for my personal and professional growth. I got my first real introduction to the professional world at the Fortune Society and learned about the importance of networking. Now, I get a decent paycheck, plus full benefits, which gives me a real sense of pride. **I cannot overstate the importance of being able to earn a living wage!** It truly impacts every aspect of life for people like myself after they are released from incarceration. I don't have to worry about being re-arrested or re-incarcerated now, because I earn money from a real job. I have a deep sense of obligation to my community and my family, because of the opportunity that I have been given from my employer.

My personal story is just one of thousands of similar stories that could be told by those served by the Fortune Society every year.

Given the importance of work for people coming out of prison and jail into neighborhoods across New York City every year, Fortune strongly supports protections against discrimination by private employers.

In particular, we are very supportive of the concept of restricting the period during which a criminal record is used to decide whether someone is a good candidate for hire – set in the proposed bill as 10 years for a felony and 5 years for a misdemeanor - because the best evidence of a person’s likelihood to recidivate is their recent past behavior.. This is an effective way of assessing risk based on evidence-based practices, and would allow for formerly incarcerated individuals to have a better chance of obtaining employment, even if they have more serious convictions from their more distant past. At Fortune, **we know from experience that individuals can truly become excellent employees and positively contributing members of society, regardless of the nature of their previous convictions.**

We also want to acknowledge that New York State is leading the country in giving a fair chance to individuals being released from incarceration. In fact, Fortune was one of the leading advocates for the policies now required under Article 23-A of the NYS Corrections Law, which prohibits discrimination against individuals previously convicted of a criminal offense. Our President/CEO, JoAnne Page, is now a member of the NYS Council on Community Reentry and Reintegration, which is just one more example of the ways that the State is prioritizing a fair chance for those coming out of prison and jail.

On the City level, we were thrilled when the Mayor’s Executive Order (No. 151) was put in place in 2011 to ensure that people with criminal convictions unrelated to the job in question would not face an unnecessary barrier to employment with the New York City government. The City Council legislation that has been introduced will go even further – placing a stronger emphasis on employers NOT to discriminate against qualified job candidates because of their criminal record. If enacted, this bill will expand job opportunities for people being released from incarceration, which is one of the most important things we can do to support successful reentry back into society.

We also know that incarceration has a disproportionate impact on communities of color, and therefore, this new law would have a dramatic impact on Black and Latino individuals who too often face the combined impacts of poverty, incarceration, and limited job opportunities. While the unemployment rate is declining for the general population, it is still higher for communities of color. **According to the 2014 State of Black America, published by the National Urban League, the unemployment rate for Blacks was 13.1% compared to 6.5% for whites in 2013 nationwide.** This has a devastating impact on communities of color – the neighborhoods that I know all too well – where limited opportunities and high incarceration rates create a level of hopelessness and despair that destroys families and communities and allows too many hidden talents and abilities to go untapped.

I am proud to be part of a City that is leading the way in trying to end this unjust discrimination against those with criminal records – recognizing the positive impact that this will have on public safety for everyone, and particularly for communities of color to have the job opportunities that they need and deserve to create a better future for themselves and their children.

Before concluding our testimony, I wanted to share some additional stories from others who, like myself, were incarcerated and benefited from obtaining full-time living wage employment with the assistance of the Fortune Society.

CLIENT STORIES:

- **Mr. W.** – He first arrived at Fortune on March 28, 2014 after serving 3 years in a federal facility and was living in a Bronx halfway house. With the help of Fortune’s Employment Services, he obtained employment in the field of construction as an electrician’s assistant earning \$12.50/hour working full-time. With this steady income, he was able to secure permanent housing – a one-bedroom apartment in the Bronx – and he is able to provide both financial and emotional support to his 8-year-old daughter. He also benefited from Fortune’s mentoring program, which has helped him become more sociable and outgoing. He now also takes a pro-active role in counseling his peers. All of this is the result of the increased self-esteem he got from the program and from obtaining employment with decent pay.
- **Mr. G.** – He was involved in criminal activity at a young age and was arrested for the first time at age 12. He was expelled from school in 9th grade reading only at a 2nd grade reading level. He has an extensive history of using alcohol and drugs and has 2 adult level criminal convictions. With the help of Fortune’s Employment Services, he obtained a job at a plumbing company with a starting wage of \$10/hour. He was later able to obtain an even better job at a carpentry company where he now earns \$18/hour and has had no further criminal justice involvement and no further issues with substance abuse.
- **Mr. P.** – He was released from federal prison in March 2013 after serving a 15-year sentence. He completed Fortune’s job readiness workshop and then enrolled in our Green Jobs Training program, through which he obtained his 10-hour OSHA certification, along with other important certifications for the green construction field. He immediately obtained employment with a company and is currently making \$12/hour.

Each of the individuals described above is just one of thousands of people in New York City who can become positive, contributing members of society once given the chance at the right employment opportunity. This not only gives them the self-confidence they need to succeed, but the income they need to sustain themselves and their families so that they do not have to turn to a life of crime in order to make money to support themselves.

Fortune is eager to work closely with the City Council to prohibit unnecessary discrimination against men and women with past criminal records and for leading the way to ensure that New York City is serving as a model for other cities in ending discrimination against people with criminal records.

Respectfully Submitted,

Barry Campbell

Special Assistant to the President/CEO, JoAnne Page

The Fortune Society, Inc.

29-76 Northern Blvd.

Long Island City, NY 11101

bcampbell@fortunesociety.org

<http://www.fortunesociety.com/>

Fair Chance Act Testimony - Jonathan Jimenez, fourth year medical student

I am Jonathan Jimenez, a fourth year medical student at the Icahn School of Medicine at Mount Sinai and a Master's in Public Health student at Columbia's Mailman School of Public Health.

I am testifying in support of the Fair Chance Act, not just as a medical student, soon to be physician, but as a family member. My cousin and I were born in Elmhurst Hospital in Queens. We grew up like brothers, although in different homes and neighborhoods. He was convicted of a crime early in his life, and after completing sentence, it seemed he had been sentenced to a life without employment.

This act could have given my cousin a second chance at a job and stable life. A second chance that many others get without even asking. A study by sociologist Devah Pager in 2009¹, showed that white convicts were more likely to get a call back for an interview than black applicants without a criminal record. In 2013, the London based bank HSBC was found to have laundered close to a trillion dollars in money for drug cartels in Latin America². Not a single person from this company was convicted of a crime. None of them are having an especially hard time finding employment³. None of them are here today advocating for this act to be passed. Meanwhile, many who are convicted, including my family members, are looking for opportunities to build a stable life with their family--and are denied these opportunities.

As a future physician I also support this law for its potential to support public health. There are the benefits to health of reduced stress and stable income that allow families to have shelter and food security. Additionally, growing body of research shows that adverse childhood experiences, including a parent going to prison, are a very strong predictor of health later in life.⁴ Since employment reduces recidivism, from 52.3% to 16% in one report, keeping people employed and out of prison will improve public health.⁵ Moreover, as a Vera Institute report recently showed, going to prison is itself a health risk.⁶ Preventing, people from going to

¹ Pager, Devah, Bruce Western, and Bart Bonikowski. "Discrimination in a Low-Wage Labor Market A Field Experiment." *American Sociological Review* 74.5 (2009): 777-799.

² "HSBC Judge Approves \$1.9B Drug-Money Laundering Accord." 2013. 3 Dec. 2014
<<http://www.bloomberg.com/news/2013-07-02/hsbc-judge-approves-1-9b-drug-money-laundering-accord.html>>

³ "Co-op hires ex-HSBC boss who quit amid money ..." 2014. 3 Dec. 2014
<<http://www.thisismoney.co.uk/money/news/article-2846443/Co-op-hires-ex-HSBC-boss-quit-money-laundering-scandal.html>>

⁴ Centers for Disease Control and Prevention (CDC). "Adverse childhood experiences reported by adults--five states, 2009." *MMWR. Morbidity and mortality weekly report* 59.49 (2010): 1609.

⁵ "White Paper - The Southern Coalition for Social Justice." 2014. 3 Dec. 2014
<http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf>

⁶ Cloud, D. "On Life Support: Public Health in the Age of Mass ..." 2014.
<<http://www.vera.org/sites/default/files/resources/downloads/on-life-support-public-health-mass-incarceration-report.pdf>>

prison will keep them and their families healthy. It is not only the right thing to do, but the policy will also reduce healthcare, judicial, and correctional costs.

Hiring more hospital and clinic employees who have interacted with the justice system will also make the healthcare system a more compassionate place, especially for patients with criminal records, who disproportionately suffer from mental illness and chronic disease. Johns Hopkins Hospital and Health System has taken the lead on hiring formerly incarcerated residents, and in 2009 found that their employees with criminal records had lower turnover rates and higher productivity.⁷ Kaiser Permanente, the largest healthcare employer in California, has also focused on fair hiring for applicants with criminal records. Patient safety has not been compromised at either of these institutions.

This should not be surprising, since it is the unequal application of the law and the War on Drugs that is driving incarceration, not a character flaw in poor people or people of color. The Bureau of Prisons reports that 50% of inmates are convicted of drug offenses and another 10% are convicted of breaking immigration law.⁸ Neither convictions are lawful reasons to deny employment. Especially because much research shows, including a recent report by the Brookings Institute, shows that even though whites are just as likely to sell and use drugs, blacks were many times more likely to get arrested.⁹ It is, therefore, not true that those already working in the healthcare system, including my classmates, have never committed a crime; just as they are not a threat to patient safety, neither are the employees this law will help usher in.

This law, most significantly, provides a framework to help employers effectively comply with federal anti-discrimination laws. Unfortunately, as the science of the subconscious mind has shown, we cannot rely on people, even physicians,¹⁰ to make unbiased judgements.¹¹ Many employers will find the requirements of the law too cumbersome or will ask for an exemption to be able ask applicants only about specific crimes. But keeping any discussion of a criminal record until after the position has been offered and keeping that post-offer discussion well documented, ensures that everyone, including people like my cousin and so many others, have a fair chance at employment. I urge you to support this law.

⁷ "Job training crucial for ex-offenders - Collections." 2010. 3 Dec. 2014
<http://articles.baltimoresun.com/2009-12-15/news/bal-op.exoffenders15dec15_1_ex-offenders-prisoners-criminal-justice-system>

⁸ "BOP Statistics: Inmate Offenses - Federal Bureau of Prisons." 2013. 3 Dec. 2014
<http://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp>

⁹ "How the War on Drugs Damages Black Social Mobility ..." 2014. 3 Dec. 2014
<<http://www.brookings.edu/blogs/social-mobility-memos/posts/2014/09/30-war-on-drugs-black-social-mobility-rothwell>>

¹⁰ Burgess, Diana et al. "Reducing racial bias among health care providers: lessons from social-cognitive psychology." *Journal of general internal medicine* 22.6 (2007): 882-887.

¹¹ Rachlinski, Jeffrey J et al. "Does unconscious racial bias affect trial judges." *Notre Dame L. Rev.* 84 (2008): 1195.

FOR THE RECORD



Written Testimony Regarding Intro 318 by the New York Staffing Association

The New York Staffing Association (NYSA) is a trade association that promotes the interests of the staffing industry through legal and legislative advocacy, education, and the advancement of high standards of ethical conduct. NYSA is the sole trade organization for the staffing industry in the State of New York and serves as the voice of the industry to communicate industry matters to association members, legislative leaders, regulators, the news media and the general public. NYSA represents a diverse base of companies, ranging from small independently-owned staffing companies to large national agencies. Our members are staffing firms that operate or place positions in the New York area. The New York Staffing Association members are responsible for over 40,000 employees throughout the City of New York and an estimated \$1.6 billion in economic impact.

While we support the Council's intent of Intro 318, we have a number of concerns, together with recommendations and clarifications for amendments of the bill we would like to put forward:

Regarding Section 10(a)(i): We respectfully submit that this amendment is not necessary. Article 23-A of the State Corrections Law already requires employers to carefully consider, among other things, "the time elapsed since the occurrence of the criminal offense ..." (§ 753(d)). As a result, there is not a need in the instant bill to clarify that employers must not violate Article 23-A "regardless of when such conviction occurred ..." – that protection is already built into the existing statute. As a result, we would request that this amendment be stricken.

Regarding Section 10(a)(ii): While we understand the purpose of this amendment, we are concerned with some of the potential consequences. Certain felonies (like child or elder abuse crimes, or crimes relating to the unlawful use or possession of a weapon) should still be considered after ten years if the staffing agency is to place, for instance, a schoolteacher, nursing home aide, or security guard, etc. In addition to the rehabilitation process of persons convicted of a crime, certainly the safety and welfare of the public must be an equally legitimate consideration, which Article 23-A rightly mandates.

Moreover, in connection with Section 10(a)(ii) small businesses and other employers will have no practical way – short of becoming criminal law attorneys – of applying the bill's directive that "Criminal acts committed outside the state shall be classified as acts committed within the

state based on the maximum sentence that could have been imposed for such conviction under the laws of such foreign jurisdiction” There is no reasonable way any employer could be expected to know this information. As a result, we would request that this amendment be stricken.

Regarding Section 10(b)(iii): We believe that the 7 day wait period is too lengthy, as it is detrimental to employers trying to hire employees in a timely fashion. Many staffing firms interview candidates and have jobs available for them immediately – for instance, often the very next morning. Waiting 7 days would mean the staffing firms could not fill the job in a timely manner (as demanded by the staffing firm’s client who frequently need temporary on short notice). If the need was critical, most likely the client would of necessity be forced to go another agency. Staffing firms cannot in practice ask clients to wait 7 days to fill a temporary job – otherwise those jobs will no longer exist. We would request that this amendment be stricken.

Second, also in respect of Section 10(b), we suggest inserting a definition for a “conditional offer of employment” to include, for employment agencies (staffing firms), making the decision to add the candidate to the staffing firm’s pool of qualified temporary employees. Notably, a “conditional offer of employment” for Form I-9 purposes is also considered to be when the temporary staffing firm deems the candidate suitable for inclusion in the staffing firm’s pool of temporary employees. This timing works well because staffing firms frequently run the background checks for candidates they think we would be appropriate for a future temporary position without having any specific job available for them yet (e.g. substitute teachers). If the Council elects to retain the 7-day requirement, defining “conditional offer of employment” in accordance with our suggestions (i.e., at the time the individual is deemed suitable for inclusion in the staffing firm’s temporary pool) it would improve the chances that the offer of employment could be held open for the 7 days without alienating the staffing firm’s client or risk losing jobs.

Also, given the definition of “any inquiry,” in subdivision (b) employers cannot even mention, during an interview, that a background check may be required at a later time. We understand the rationale behind this – to not discourage those with convictions from proceeding through the application process – but this seems extreme and also will pose a trap for the unwary. Also, what if an applicant asks – must an employer remain silent and not answer whether a background check will be required? We propose that the definition of “any inquiry” not include the employer informing the candidate that a criminal background check or other disclosure will be required at a future date.

Regarding Section 10(c), the amendment states that a violation of the legislation will result in a monetary fine, along with an additional 'finding of unlawful discrimination.' We respectfully request confirmation that this additional finding will not carry additional penalties.

Second, also in respect of Section 10(c), it seems rather extreme that a discriminatory practice will be "presumed" to have occurred, absent "clear and convincing evidence otherwise" in the event the employer does not provide the required written notices. Practicably speaking employers will rarely (if ever) have "clear and convincing evidence" that discrimination did not occur – it is virtually impossible to prove a negative in this fashion. Moreover, this language changes the standard applicable to the City's Human Rights Law – a standard that otherwise requires that the complainant prove by a preponderance of the evidence that discrimination occurred, whether gender or race discrimination or otherwise. It is unclear to us, frankly, why an individual convicted of a felony should have a substantially easier standard to meet in order establish discrimination compared to similarly situated victims of other forms of discrimination. Given the gravity for a business associated with a finding of illegal discrimination, we request that this amendment be stricken.

Again, while we do support the intent of Intro 318, we believe the clarifications outlined above will make it an even stronger bill and foster job creation in the City. On behalf of NYSA, we respectfully submit this testimony to the New York City Council's Committee on Civil Rights.

Joel Klarreich, Esq., General Counsel
Tannenbaum Helpert Syracuse and
Hirschtritt
Ph: (212) 508-6747
jak@tanhelp.com

John McCarthy, Esq.
Bolton-St. Johns, LLC
Ph (212) 431-4748
Cell: (646) 300-3510
john.mccarthy@boltonstjohns.com

James Essey, Legislative Chair
The TemPositions Group of Companies
Ph: (212) 916-0859
jessey@tempositions.com

JACKSON ROCKINGSTER
President & CEO
HABNET CHAMBER OF COMMERCE
November 3, 2014

Regarding Intro 318-Fair Chance Act

1. I am also an employer; Vice-Chair of the Flatbush Nostrand Junction BID.
2. I represent nearly 200 small business owners.
3. Our members overwhelming support Bill 318 by 82%
4. The Bill is in the best interest of small businesses because it expands the pool of qualified applicants.
5. Each person who is gainfully employed creates a multiplier effect that contributes to the overall circular flow of economic activity. They pay taxes, the frequent vendors who in turn have disposal income.
6. Most important, someone who paid his/her debt to society should be continuously punished what is in most instances one act of youthful indiscretion. They should be afforded equal opportunity and access

Testimony of Paul Keefe, Senior Staff Attorney
Next Door Project, Community Service Society of New York
In support of the Fair Chance Act, Intro. 318
Civil Rights Committee of the New York City Council
December 3, 2014

This testimony is presented on behalf of the Community Service Society of New York (“CSS”), a nonprofit organization serving low-income New Yorkers for over 175 years. CSS has long believed that work is the surest pathway out of poverty, and, since 2008, our legal team has addressed employment barriers faced by people with criminal records. Through our Next Door Project, we train and supervise a cadre of retired senior citizen volunteers to help individuals obtain, understand, and fix mistakes on their criminal records, reaching over 500 clients annually. Additionally, we litigate individual and class action cases, help people obtain certificates that demonstrate rehabilitation, and advocate for policy changes on the state and local level.

The Fair Chance Act amends the New York City Human Rights Law to accomplish two primary goals. First, it implements a “ban the box” policy: private and City employers can’t search for or ask about a prospective employee’s criminal record until after offering that person a job. If employers want to withdraw the offer after a background check, they must explain their decision in writing and how it complies with current law, which already prohibits declining employment to people simply because they have a record. The employer must then give the applicant a copy of the background report with seven days to correct any mistakes, offer evidence of good conduct, and engage in an interactive process to find the best position for the applicant.

Second, the Act offers a second chance for people with old convictions: employers can’t use criminal convictions against a prospective employee after a certain amount of time has passed: five years for a misdemeanor and ten years for a felony. The time runs from the date the person is sentenced or released from incarceration, whichever is later. Studies show that the passage of time is the most reliable indicator that a person will no longer engage in criminal activity. These lookback periods are based on research showing that, after about seven years, a person with a criminal record has no more likelihood of reoffending than someone without, and match time periods in Massachusetts law. San Francisco bans inquiry into all convictions more than seven years old, and Hawaii’s time limit is 10 years.

The Fair Chance Act covers both private employers and City government, but it does not affect jobs where federal, state, or local laws require an official background check to prevent people with certain convictions from working in sensitive areas. For example, federal law governs institutions, like banks, insured by the Federal Deposit Insurance Corporation, and it prevents them from employing anyone who was convicted of, or entered into a pretrial diversion program for, a charge involving dishonesty, breach of trust, or money laundering.¹ State law requires, with very limited exceptions, institutions serving the mentally ill, developmentally disabled, or providing home health aide services to deny employment to people convicted of a sex offense

¹ 12 U.S.C. § 1829.

and, within the previous ten years, a felony involving violence along with several other felonies and misdemeanors.²

For those jobs, the employer can tell prospective employees that it does background checks and that certain convictions are disqualifying, though a person may become qualified with a certificate of relief from disabilities or certificate of good conduct. Only when employers are not constrained by legal requirements does the Fair Chance Act apply, and it dovetails with existing City and State law prohibiting employers from denying a job (or a license to do a job) simply because the person has been convicted of a crime.³ Correction Law Article 23-A states that all public and private employers cannot base an employment decision on a conviction unless it is directly related to the job or otherwise poses an unreasonable risk. Before determining that a person's conviction history is directly related to the job or hiring the person would otherwise pose an unreasonable risk, employers have to consider several factors, including:

- New York public policy encouraging employment of people with criminal records;
- The specific duties and responsibilities of the job and the bearing, if any, of the person's conviction history on his or hers fitness or ability to perform them;
- How long ago the offense occurred, how serious it was and the person's age at the time;
- The person's evidence of rehabilitation; and
- The employer's legitimate interest in protecting property, specific individuals, or the general public.

Currently, some employers simply refuse to consider job applicants who check "the box" verifying that they have a criminal record. Those employers are clearly not performing the appropriate evaluation the law presently requires.

The Fair Chance Act promotes racial equality and reduces recidivism

The racial disparities present in the criminal legal system are well-known. In New York, African-Americans and Hispanics are, respectively, ten and five times more likely to be imprisoned or on parole than Whites and seven and three times as likely to be in jail.⁴ In 2010, out of the total incarcerated population in the United States, 39% were White (compared to 64% of the total population), 19% were Hispanic (compared to 16% of the total population), and 40% were Black (compared to 13% of the total population).⁵ These numbers are the result of racial disparities that begin at arrest and follow people throughout their experience with the criminal legal system.⁶

² N.Y. Exec. L. § 845-b.

³ N.Y. Exec. L. § 296(15), N.Y. City Admin Code § 8-107(10). Employers are completely prohibited from asking about or acting upon any arrest that did not lead to a criminal conviction. N.Y. Exec. L. § 296(16), N.Y. City Admin Code § 8-107(11).

⁴ CHRISTOPHER HARTNEY & LINH VUONG, *CREATED EQUAL: RACIAL & ETHNIC DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM 20-21* (Nat'l Ctr. on Crime & Delinquency 2009), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/created-equal.pdf.

⁵ Leah Sakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity*, PRISON POLICY INITIATIVE (May 28, 2014), <http://www.prisonpolicy.org/reports/rates.html>.

⁶ SENTENCING PROJECT, *REDUCING RACIAL DISPARITY IN THE CRIMINAL JUSTICE SYSTEM 4-5* (2008), available at http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf

Prior to incarceration, more than two-thirds of male prisoners were employed and more than half were the primary source of financial support for their children.⁷ Once a person has a criminal record, however, his or her economic prospects plummet. Within one year after release from incarceration, 60% of people are unemployed,⁸ and those who have been incarcerated who do manage to obtain employment work approximately nine fewer weeks each year, earn less money—approximately 40% less in annual earnings—and have limited upward mobility, losing \$179,000 by age 48.⁹ Ensuring that all New Yorkers have a fair opportunity to be considered on their qualifications first—rather than denied outright—will strengthen families and communities.

After submitting a job application, people with criminal records are only half as likely to get a call back than those without; for African-American applicants, the likelihood is reduced to one-third.¹⁰ New York City employers offer jobs or second interviews to 17.2% of whites with criminal records, but only 15.4% of Latinos and 13.0% of blacks with no criminal record at all.¹¹ Studies consistently show that employment is one of the best ways to reduce recidivism because it strengthens community ties and social connections, encouraging positive actions and reducing antisocial behavior.¹² Reducing unnecessary barriers to employment of people with criminal records will positively impact the employment opportunities of New Yorkers of color, and it is key to reducing racial and economic disparities.

Implementing the Fair Chance Act will not be burdensome for employers

This bill increases employers' pool of available employees by not excluding applicants simply because of their conviction histories, and it works without changing most employers' current background check processes: nationally 94 percent of employers who use background checks do not run them until after a job interview; 64 percent wait until a job offer.¹³

The Fair Chance Act does not require an employer to hire someone with a criminal record. It simply defines a process designed to level the playing field for people with criminal records when being evaluated for employment. Penalties for violating it are serious, but not unreasonable: Employers who circumvent the new law face a minimum fine of \$1,000 and a legal presumption that they engaged in discrimination based on criminal record. The amount of this fine is in line

⁷ PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY 3 (2010), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/CollateralCosts1pdf.pdf http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf.

⁸ CENTER FOR EMPLOYMENT OPPORTUNITIES, ISSUE OVERVIEW: CRIME AND WORK 1, available at http://www.ceoworks.org/Roundcrime_work012802.pdf.

⁹ PEW, *supra*, at 11.

¹⁰ Devah Pager, *The Mark of a Criminal Record* 108 Am. J. Soc. 937, 960 (2003), available at http://www.princeton.edu/~pager/pager_ajs.pdf.

¹¹ DEVAH PAGER ET AL., RACE AT WORK: A FIELD EXPERIMENT OF DISCRIMINATION IN LOW-WAGE LABOR MARKETS 21 (Princeton U. 2008), available at <http://faculty.chicagosb.edu/workshops/orgs-markets/pdf/pager.race.pdf>.

¹² Chris Uggen, *Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism* 67 AM. SOC. REV. 529, 529 (2000); DEIRDRE HEALY, THE DYNAMICS OF DESISTANCE: CHARTING PATHWAYS THROUGH CHANGE 177 (2010).

¹³ SOC'Y OF HUMAN RESOURCES MGMT., BACKGROUND CHECKING—THE USE OF BACKGROUND CHECKS IN HIRING DECISIONS (2012), available at <https://www.shrm.org/Research/SurveyFindings/Articles/Pages/CriminalBackgroundCheck.aspx>.

with recent legislation passed by the City Council: the maximum fine for tenant harassment was just doubled from \$5,000 to \$10,000, and Paid Sick Leave fines are, for successive violations, \$500, \$750, and \$1,000.

These penalties only come into play, however, if an employer inquires about an applicant's record before a conditional job offer or, if the employer wants to withdraw the job offer, fails to explain why, provide a copy of the background check, and seven days to respond. There is no extra paperwork or process for an employer who does not ask about criminal convictions, for an employer who asks but decides to hire the person anyway, or for an employer who simply decides not to hire the person after the seven-day period. The Fair Chance Act is careful to only impose obligations on employers who inquire about an applicant's criminal record.

Rather than creating a new burden for employers, this bill will enhance employers' compliance with Correction Law Article 23-A, which requires employers to individually evaluate each applicant with a criminal record as an individual.¹⁴ Additionally, when employers determine candidates' eligibility using Article 23-A, they gain protection against negligent hiring lawsuits.¹⁵

Anecdotal evidence and research show that individuals with criminal records work harder, have less turn-over, and readily develop into leaders. "My new employees are loyal, devoted to the company, and have played an enormous role in our success," said Franklin Cruz, a Bronx business owner who, though initially skeptical, has been hiring people with records for thirteen years.¹⁶ His experience is supported by data. Evolv, a company that evaluates large amounts of human resources statistics to help companies profile successful employees, has found that "employees with criminal backgrounds are 1 to 1.5 percent more productive on the job than people without criminal records."¹⁷

Large-scale employers have seen the benefits of giving everyone a fair shot at employment as well. At the beginning of this year, Target, the nation's second largest retailer, joined the ranks of employers who have removed inquiries about criminal histories on job applications, following the lead of Wal-Mart, which removed the question in 2010.¹⁸

There is precedent across the country for enacting the Fair Chance Act. Hawaii, Massachusetts, Minnesota, New Jersey, and Rhode Island and San Francisco, Philadelphia, Seattle, and Buffalo

¹⁴ N.Y. CORRECT. L. § 753; see *Bonacorsa v. Van Lindt*, 71 N.Y.2d 605, 612, 523 N.E.2d 806, 809-10 (1988).

¹⁵ N.Y. EXEC. LAW § 296(15) (excluding evidence about employee's criminal record). Negligence claims against employers have also failed on strong facts. See, e.g., *Givens v. N.Y. City Hous. Auth.*, 671 N.Y.S.2d 479, 479 (App. Div. 1st Dep't 1998) (three nonviolent convictions and one robbery conviction insufficient to establish propensity of violence in a public housing caretaker); *Ford v. Gildin*, 200 A.D.2d 224, 227 (App. Div. 1st Dep't 1994) (unforeseeable that person with manslaughter conviction, employed as a porter in a residential building, would molest a child 27 years later).

¹⁶ New York State Department of Labor, Work for Success "Success Stories," available at <http://www.labor.ny.gov/careerservices/work-for-success/stories.shtm>.

¹⁷ Inside the Wacky World of Weird Data: What's Getting Crunched, <http://www.cnbc.com/id/101410448> (last visited Feb. 23, 2014).

¹⁸ Janet Moore, *Target to ban criminal history box on job applications*, STAR TRIBUNE, Oct. 26, 2013, available at <http://www.startribune.com/business/229310141.html>.

prevent public and private employers from early inquiries into an applicant's conviction history.¹⁹ By moving the inquiry later in the hiring process, Austin has increased the number of qualified job applicants. "There are extremely talented and qualified people who happen to be ex-offenders. They are just as productive as people who do not have criminal records," said Mark Washington, Austin's human resources director.²⁰

The Fair Chance Act treats all potential employees, whether or not they have a criminal record, equally until one of them is chosen for hire. At that point, a background check may be done, and an employer can still, under existing law, refuse to hire the person if the conviction is directly related to the job or hiring the individual would pose an unreasonable risk. This ensures that people with conviction histories are considered on their present merits instead of their past mistakes, and it creates an opportunity for the employer and job-seeker to come to an agreement about what position is appropriate given the applicant's record. In doing so, it furthers the goal of existing laws that require people with convictions to be viewed as individuals, rewarding their rehabilitation with the opportunity for meaningful work.

Thank you for the opportunity to comment on this legislation.

Sincerely,



Paul Keefe
Senior Staff Attorney
212-614-5339 :: ph
212-614-5569 :: fx
pkeefe@cssny.org

¹⁹ See NAT'L EMPLOYMENT LAW PROJECT, BAN THE BOX RESOURCE GUIDE (2014), available at www.nelp.org/page/-/SCLP/CityandCountyHiringInitiatives.pdf; and NAT'L EMPLOYMENT LAW PROJECT, STATEWIDE BAN THE BOX: REDUCING UNFAIR BARRIERS TO EMPLOYMENT FOR PEOPLE WITH CRIMINAL RECORDS (2014), available at <http://www.nelp.org/page/-/SCLP/ModelStateHiringInitiatives.pdf>

²⁰ Efforts to 'ban the box' continue, <http://jailstojobs.org/wordpress/efforts-to-ban-the-box-continue/> (last visited Feb. 23, 2014).



**The New York City Council
Committee on Civil Rights**

Hearing RE: Int. 0318-2014. A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record or criminal conviction.

**Testimony of Robin Richardson, Esq.
Equal Justice Works Fellow
Sex Workers Project
Urban Justice Center**

**40 Rector St., 9th Floor
New York, New York 10006
T: 646-602-5690
rrichardson@urbanjustice.org**

Wednesday, December 3, 2014 at 10:00 a.m.

City Hall, Committee Room, New York, NY 10007

Good morning, Council Member Mealy and members of the Committee on Civil Rights.

The Sex Workers Project at the Urban Justice Center very much appreciates the opportunity to speak in favor of The Fair Chance Act. My name is Robin Richardson and I am an attorney at the Sex Workers Project, the first and longest-running program in the nation dedicated to providing direct legal and social services to sex workers and survivors of human trafficking. With the funding of Equal Justice Works, I provide legal assistance to people with prostitution convictions who are seeking employment in the formal economy.

For my clients, prostitution is often a part of a transitional period of their lives. It is a means to support themselves and their families until they can get their feet under them, a way to escape from an abuser, or a safety net when they do not have others who they can turn to for help. Many of my clients are victims of human trafficking and prostitution is an activity in which they were forced to engage. Whether someone is engaging in prostitution due to choice, circumstance, or coercion, those who are the most likely to be criminalized for prostitution are often the most vulnerable. In addition, many of my clients, especially my transgender clients, are falsely profiled and arrested for prostitution just for walking down the street. Because of a culture of

plea agreements, they often plead guilty. When my clients, often with enormous effort, strength and grace, transition out of sex work, their permanent criminal record leaves them subject to stigma and illegal criminal history-based hiring discrimination. A person's history of having done sex work is almost never relevant to their ability to do a job, but the stigma attached to these arrests is such that many of my clients have been turned away from jobs once their criminal history comes to light. These barriers to employment actually force people back into prostitution when they cannot get a job in the formal economy.

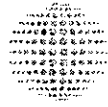
Passing the Fair Chance Act would make it much easier to determine when an employer is discriminating against someone based upon their criminal history and, therefore, creates an important safeguard against illegal hiring discrimination. For this reason, it is incumbent on this committee to pass the Fair Chance Act.

I would like to finish with the story of one of my clients who I will call Stephanie:

"Stephanie" met a man in 2002. He offered her help at a time when she had no one and he gained her trust. Unfortunately, he turned out to be a violent human trafficker. For nearly two years of Stephanie's life, she was forced into prostitution in cities across the country. During that time, she suffered horrific abuse at the hands of her trafficker and by the criminal justice system where she was arrested, convicted, and incarcerated many times with no offer of help. Unfortunately, even after she escaped her trafficker, she was not able to escape the criminal history that he had forced on her. Although I was able to vacate her New York convictions using a new law for victims of human trafficking, her criminal record extends to states where no such laws exist and, as such, her criminal record continues to plague her.

Ten years after escaping her trafficker, she has furthered her education, obtained specialized job training, and done everything in her power to make herself competitive in today's job market. Despite her greatest efforts, she is still denied employment based upon her criminal history. This happened most recently in April of 2014. Today, she is still looking for work. Every time she applies for a job, she does so with the fear that disclosing her many convictions for prostitution will keep an employer from giving her application a second glance. Unfortunately, she has never been given the opportunity to display her credentials without being overshadowed by her criminal record. The Fair Chance Act would give her just that – a fair chance to show employers her skills and dedication before they see her criminal history.

Stephanie does not want special treatment. All she wants to do is get a job and support her family. My clients already face and overcome enormous obstacles every day. Being former sex workers and survivors of trafficking should not bar them from a fair chance to compete for employment.



PARTNERSHIP
for New York City

**TESTIMONY BEFORE THE COMMITTEE ON CIVIL RIGHTS
OF THE NEW YORK CITY COUNCIL**

HEARING ON INTRO 318 - "THE FAIR CHANCE ACT"

**KATHRYN WYLDE
PRESIDENT & CEO**

WEDNESDAY, DECEMBER 3, 2014

Thank you Chairperson Mealy and members of the committee for the opportunity to testify on Intro 318.

The Partnership for New York City is an organization of the city's major employers and business leaders, representing companies that are primarily headquartered in New York, but with operations across America and around the world. Local legislation affecting hiring practices of large employers that operate in many jurisdictions is never welcome or easy to implement. With regard to Intro 318, our members generally support the principle that everyone who wants to work should have a fair chance in the job application process. They recognize that people with a criminal record are at a serious disadvantage when it comes to employment opportunity and that it is in the interests of our entire society to open opportunities for this population.

After careful consideration, however, we oppose Intro 318 because we have concluded that Council legislation is not the best way to advance the purposes of the Fair Chance Act. We reach this conclusion based on three factors:

- First, New York City is a hard place to build a business. It is expensive, highly regulated, and very litigious. Council bills that place additional mandates on employers send a really bad message about how city government values the contributions of business and discourage the kind of public-private cooperation that we need to improve economic opportunity and upward mobility for all New Yorkers.
- Second, New York State already has one of the strongest laws against discriminatory practices in hiring ex-offenders on the books. If there are issues of compliance with the state law, that is what we should be addressing, rather than adding a layer of local law. In fact, most city employers are in heavy competition for qualified, high performing employees. They are not looking to limit the pool of applicants for any job. There will always be some bad actors, but the proposed legislation - like the credit check bill - places an administrative burden and cost on every employer, not just those behaving badly.

- Third, the most effective way to expand opportunities for ex-offenders is to increase employer participation in career and technical education, skills training and voluntary hiring programs. I am not aware what efforts have been made by the Council to work with employers on such programs, but the recent *Career Pathways* report by Mayor de Blasio's Jobs for New Yorkers Task Force suggests a number of ways that the goals of the Fair Chance Act could be accomplished without yet another legislative mandate. Let me here make a formal offer that the Partnership for New York City would be happy to work with the Council on voluntary alternatives for helping ex-offenders secure job skills and employment opportunities.

Some large employers have voluntarily removed inquiries about criminal history from their job applications. Others have assisted lawmakers in other states to craft balanced legislation (such as New Jersey's "Opportunity to Compete Act") that ensures job applicants are not automatically screened out because of prior convictions without disrupting employers' due diligence responsibilities.

Today, however, employers feel on the defensive, as they are increasingly challenged to protect themselves and their customers against losses, including those that are incurred as a result of poor vetting of employees. Identity theft and cyber-fraud have escalated the traditional problems of business exposure to damages and have increased the number of highly sensitive positions that require careful background checks.

In terms of specific objections to Intro 318, employers have noted the following: it delays and potentially disrupts the standard hiring process; it mandates that employers disregard certain convictions that may be relevant; it imposes new administrative burdens on employers; and, it increases employer exposure to frivolous lawsuits for inquiring about a job candidate's criminal history. We have attached to this testimony a more detailed explanation of these concerns.

Thank you.

Specific Concerns with Intro 318

1. *The legislation restricts what information an employer may consider when vetting an applicant for employment, which interferes with the rights of employers to protect their customers and run their businesses safely.*

Under current law, an employer in NYC may only consider prior convictions that bear a direct relationship to the job at issue. This aligns with the federal Equal Employment Opportunity Commission's guidance to employers, which says an applicant's criminal history should only be considered when "job related and consistent with business necessity."

Intro 318 goes beyond this standard by forcing employers to disregard felonies more than ten, and misdemeanors more than five, years old (running from the date of conviction or release from incarceration, whichever is later) regardless of the nature of the crime or the nature of the position being hired for. Positions required by law to have a background check are exempt from this "look-back restriction" but many other sensitive positions in the private and nonprofit sectors are captured such as technicians that enter people's homes.

2. *The legislation interferes with standard employment practices, adding to the cost and interrupting the timing of hiring in the five boroughs.*

Intro 318 prohibits employers from asking about criminal history or running a criminal background check until after a conditional job offer has been made. Standard industry practice and also many of the similar laws adopted around the country (including Executive Order 151) allow for background checks after an initial interview.

Intro 318 requires employers to provide a written copy of their Article 23-A legal analysis of why they declined to hire the applicant. Sharing this analysis, which could potentially include privileged legal information, with every applicant turned down is a very onerous requirement.

Under current law, employers in New York are already required to post a copy of the Article 23-A law in their workplaces; receive written consent from applicants before running a criminal background check; provide a copy of the background check report to job applicants along with a copy of the State's Article 23-A law; and, upon request, also provide a written statement of the reason for turndown (though not the Article 23-A legal analysis) within 30 days of a person being turned down.

Intro 318 further requires that employers keep the position open for 7 business days while the applicant responds to the Article 23-A legal analysis provided by the employer. Federal law already regulates employers' use of formal criminal background checks (including a provision that allows job applicants to receive notice and respond) but Intro 318 would push New York City beyond this established federal standard.

3. The legislation needlessly exposes employers to greater liability by creating new employer responsibilities in the City's Human Rights Law.

In the last two years, antidiscrimination provisions of the City's Human Rights Law were extended to three new protected classes in the workplace: unpaid interns, job applicants who are unemployed and pregnant women. These new protected classes have the potential to become a heavily litigated area with real implications for the city's business environment.

Intro 318 would embed several new employer responsibilities into the City's Human Rights Law (i.e., provide legal analysis to applicants, hold job open for seven business days, don't consider felonies more than 10 years old, etc.), each of which opens the employer up to lawsuits and fines if not carried out precisely as dictated. For this reason, neither the City's Executive Order 151 nor New Jersey's "Opportunity to Compete Act" attaches a private right of action to its "ban the box" provisions as an enforcement mechanism.

Moreover, employers that are legally barred from hiring people with convictions would like an explicit exemption from all provisions of the Act (like New Jersey's law) to ensure they will not have to wait to inquire about criminal history, which would waste everyone's time.

Testimony of the Center for Employment Opportunities, New York, New York
by Tani Mills, Chief of External and Legislative Affairs
December 3, 2014



Good morning, I would like to thank the Committee on Civil Rights and the Sponsors of this Act, for the opportunity to testify today. My name is Tani Mills, I am here on behalf of the Center for Employment Opportunities, known as CEO, an organization that provides immediate, effective and comprehensive employment services exclusively to men and women with criminal records.

Since our inception in 1996, CEO has placed over 17,000 individuals in full-time employment in New York City. Finding a job moves people away from criminal activity, and lessens our society's overall dependence on incarceration. CEO has proven this; our programs of transitional work, full time job placement and job retention have produced significant reductions in arrests, convictions, and reincarcerations¹.

CEO commends this Committee and the Sponsors for understanding the connection between work, poverty and crime.

This legislation offers individuals with criminal histories, employment opportunities, based upon their merit and work suitability, after they have paid their debt to society. It is been our experience that individuals who enroll in our services have made a commitment to

¹ Cindy Redcross, Transitional Jobs for Ex-Prisoners: Three-Year Results from a Random Assignment Evaluation of the Center for Employment Opportunities (CEO), Presentation at the APPAM Annual Research Conference, Washington, DC, November 6, 2009. Presentation available from the author, cindy.redcross@mdrc.org

themselves and those they love; they want to turn their lives around. They are hopeful that their future is bright and is based on the tenets of redemption and fairness. That when looking for a job they will be judged not on the poor choices of their past but on their skills, experience and seen as viable contributors to the employer's bottom line.

That said, this legislation offers employers an opportunity to hire the best person for the job without prejudice and unfounded biases. We have had many instances where once an individual demonstrates that he is the "perfect" fit, the employer will ask us to identify additional candidates for their consideration.

CEO as an intermediary has tirelessly built relationships with hundreds of small businesses in New York City filling their human resource needs with motivated and skilled individuals. Although we are proud of our success, and serve thousands of individuals each year, this still only represents a small fraction of individuals who are released into the community each year from the criminal justice system looking for work. It also does not take into consideration people who have successfully completed our program and are looking for their next job opportunity, nor the countless others who are looking for work without an intermediary like CEO.

Research has proven that individuals with a criminal history and who are now gainfully employed are less likely to return to prison. Moreover, formerly incarcerated individuals who are working, foster public safety, build stronger communities and become taxpaying citizens.

Affording individuals an equal opportunity to apply and be considered for employment should not be a privilege. The stigma of incarceration should not limit someone

who wants a job and provide basic needs for themselves and their family. This country was built on second chances and equal opportunity and that is what this legislation is all about.

We applaud the Committee and the Sponsors for proposing the Fair Chance Act.

Thank you for time and the privilege to speak today.

5 Boro Chamber of Commerce Testimony

INTRO 318-Restrictions on Criminal Background Checks Hearing December 3, 2014

Submitted by: Lenny Caro, Bronx Chamber of Commerce, Linda Baran, Staten Island Chamber of Commerce, Carlo Scissura, Brooklyn Chamber of Commerce, Jack Friedman, Queens Chamber of Commerce & Nancy Ploeger, Manhattan Chamber of Commerce

FOR THE RECORD

On behalf of the 5 Borough Chambers of Commerce and the 7500+ business members we represent, we would like voice our concern with Intro 318.

We understand the intent of the bill and indeed are aware of other states and the "ban-the-box" legislation enacted. However, this bill has specific burdens beyond that legislation and will put yet another substantial administrative burden on employers who do wish to conduct background checks on their employees. It could also open them up to lawsuits.

Our concerns lie with the following issues:

- *Reduction of information employers are able to use in determining a hire by moving a potential check until after a conditional job offer has been made and by limiting what convictions can be considered by the employer
- *Requiring written statements by employers to employees upon review of background check is onerous and will be left open to interpretation and potential lawsuits. Although state and federal law will supersede the Fair Chance Act, small businesses, not having the means to hire a lawyer to interpret these laws, could be exposed to litigation.
- *This will also be a costly administrative bill to comply with regarding paying for background checks and for administrative time to send letters, follow up, etc
- *Requiring holding a job open for 7 days is harmful to businesses who need to hire a person as soon as possible to fill an open position. Not being able to hire quickly will cause undue hardships to the business (ie retail/restaurants where staff needed on the floor immediately)

FOR THE RECORD

***Not clear if this bill affects employers with 4 or more employees whereas the state is 10 or more employees. We recommend following the state outline of 10 or more employees.**

***Enacting after just 90 days is an impossible situation for small businesses. They need training and direct help to interpret and comply with the law including editing their application and finding out where to go for background checks. We recommend a minimum of 9 months for enactment should the bill pass in order to allow small businesses to adapt**

***For the security industry, it is mandated that security guard companies are prohibited from hiring certain convicted felons and thus this bill should exempt law enforcement, corrections, the judiciary, homeland security, emergency management, or security guards governed by the NY Security Guard Act and employment staffing organizations whose clients have federal and state mandates regarding hiring practices**

We stand by most employers who prefer the NJ version of the law (Opportunity to Compete Act) which will meet the goal of this legislation but be less onerous with no private right of action and which includes specific carve outs as noted above. It has become very arduous for a business to grow in NYC. We want to encourage the Council to be mindful that businesses are feeling the "piling on" effect of mandates, regulations and the overall cost of doing business in NYC. We also hope the Council can come up with some type of incentives for businesses to hire those with criminal backgrounds to give them a chance when and where possible and Council can help find more support and resources for nonprofits working with formerly incarcerated and people with criminal backgrounds such as FECS and The Doe Fund.

FOR THE RECORD

5 Boro Chamber of Commerce Testimony

INTRO 318-Restrictions on Criminal Background Checks Hearing December 3, 2014

Submitted by: Lenny Caro, Bronx Chamber of Commerce, Linda Baran, Staten Island Chamber of Commerce, Carlo Scissura, Brooklyn Chamber of Commerce, Jack Friedman, Queens Chamber of Commerce & Nancy Ploeger, Manhattan Chamber of Commerce

On behalf of the 5 Borough Chambers of Commerce and the 7500+ business members we represent, we would like voice our concern with Intro 318.

We understand the intent of the bill and indeed are aware of other states and the "ban-the-box" legislation enacted. However, this bill has specific burdens beyond that legislation and will put yet another substantial administrative burden on employers who do wish to conduct background checks on their employees. It could also open them up to lawsuits.

Our concerns lie with the following issues:

- *Reduction of information employers are able to use in determining a hire by moving a potential check until after a conditional job offer has been made and by limiting what convictions can be considered by the employer
- *Requiring written statements by employers to employees upon review of background check is onerous and will be left open to interpretation and potential lawsuits. Although state and federal law will supersede the Fair Chance Act, small businesses, not having the means to hire a lawyer to interpret these laws, could be exposed to litigation.
- *This will also be a costly administrative bill to comply with regarding paying for background checks and for administrative time to send letters, follow up, etc
- *Requiring holding a job open for 7 days is harmful to businesses who need to hire a person as soon as possible to fill an open position. Not being able to hire quickly will cause undue hardships to the business (ie retail/restaurants where staff needed on the floor immediately)
- *Not clear if this bill affects employers with 4 or more employees whereas the state is 10 or more employees. We recommend following the state outline of 10 or more employees.
- *Enacting after just 90 days is an impossible situation for small businesses. They need training and direct help to interpret and comply with the law including editing their application and finding out where to go for background checks. We recommend a minimum of 9 months for enactment should the bill pass in order to allow small businesses to adapt
- *For the security industry, it is mandated that security guard companies are prohibited from hiring certain convicted felons and thus this bill should exempt law enforcement, corrections, the judiciary, homeland security, emergency management, or security guards governed by the NY Security Guard Act and employment staffing organizations whose clients have federal and state mandates regarding hiring practices

We stand by most employers who prefer the NJ version of the law (Opportunity to Compete Act) which will meet the goal of this legislation but be less onerous with no private right of action and which includes specific carve outs as noted above.

It has become very arduous for a business to grow in NYC. We want to encourage the Council to be mindful that businesses are feeling the "piling on" effect of mandates, regulations and the overall cost of doing business in NYC.

We also hope the Council can come up with some type of incentives for businesses to hire those with criminal backgrounds to give them a chance when and where possible and Council can help find more support and resources for nonprofits working with formerly incarcerated and people with criminal backgrounds such as FECS and The Doe Fund.

FOR THE RECORD



United Vision Marketing Firm

HQ: 590 Madison Ave: New York, NY 10022: Tel-646-355-9139: Web: www.uvmfonline.com Email-ceo@uvmfonline.com

December 03, 2014

As a business owner for more than seven years, I have first-hand experience in the hiring process.

I support the Fair Chance Act as an employer because I know the importance of giving citizens a second chance. I myself was once a high school dropout and an at risk youth.

I do believe that felonies over ten years and misdemeanors over five years should not be deciding factors for not hiring an applicant.

The Fair Chance Act will ensure that all citizens no matter their past will have a fair shot at the American dream. Together we can help make it an American reality for all.

Very Respectfully,

Dr. Nono C. Pearson
President/CEO
United Vision Marketing Firm

Written Comments of The Bronx Defenders

New York City Council Committee on Civil Rights

Hearing Regarding Int 0318-2014, A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record or criminal conviction.

December 3, 2014

My name is Molly Kovel, and I am the Legal Director of The Bronx Defenders' Civil Action Practice. My work is focused on the civil rights and employment of people with criminal records. Founded in 1997, The Bronx Defenders provides holistic civil legal services, criminal and family defense, social services and community programs to over 35,000 low-income families in the Bronx each year. I submit these comments on behalf of The Bronx Defenders, and thank the City Council for the opportunity to testify. We are thrilled to be here today and speak about our enthusiastic support for Intro 318, the Fair Chance Act (or "FCA").

In my career I have trained dozens of attorneys and workforce developers, and hundreds of community members, regarding employment and criminal records. Every client inevitably asks what to do about "The Question"? They refer, of course, to the "Do you have criminal convictions?" question that appears on the vast majority of job applications these days.

As you will hear a lot today, this stressful question has been an intractable barrier to thousands of people with criminal records who are applying for work. The Fair Chance Act will help these people to access stable employment without putting employers at risk; employers will still get to do background checks and the fundamental contours of Article 23-A are unchanged.

I want to focus on a few particular elements of the Fair Chance Act that may be otherwise overlooked today.

First, I wish to address the major problem of criminal record errors. In our experience, nearly one in three official, fingerprint-based RAP sheets contains a blatant error of some kind—mostly dismissed cases and violation-level convictions that should have been sealed under the New York Criminal Procedure Law §§ 160.50 and 160.55. These errors are compounded and multiplied in privately-procured background checks from unofficial sources.

People who have errors on their rap sheet may not even know that a criminal record will show up on their background check. Indeed, their defense attorneys advised them at the conclusion of their criminal cases that they would have no criminal record. When these people apply for jobs, they often answer “no” to the question, “Have you ever been convicted of a crime?” The Fair Chance Act will protect this group; Sub-section (b) of the law provides that an employer must give the applicant the chance to review their own background check for any errors. In my experience, this practice almost never occurs, and people who do not in fact have any convictions are routinely denied work because of errors in their record.

The Fair Chance Act is simple and clear about what is required of employers here. Because the review of the background check occurs after the interview, when the applicant has had a chance to establish a rapport with an employer, the FCA is much more likely to preclude discrimination based on a record error. While the seven day waiting period may seem long to employers, in my very extensive experience correcting criminal record errors, this is the bare minimum necessary to do so.

Second, I want to address Sub-section (a)(i) of the bill. The Fair Chance Act would extend the Human Rights Law to cover *current* employees who are convicted. At The Bronx Defenders, I have met and represented hundreds of clients in this position. Because of the gaps in the State and City laws, there is now no requirement that a current employer consider the relationship, if any, between the nature of a conviction and the job duties. Thus, we have met a housekeeping employee at a hospital terminated for a misdemeanor patronizing a prostitute charge. We have

met a Consolidated Edison employee terminated for a misdemeanor marijuana conviction that occurred off the job. We have met a clerical worker at a Home Health Agency who was terminated for getting into an argument with her ex-husband about a custody situation which resulted in a non-criminal harassment violation conviction.

The Fair Chance Act would mandate that these workers cannot be terminated unless the job duties and the conviction bear some direct relationship to one another, or the employee presents an unreasonable risk to property or to the safety or welfare of the public. The FCA will thus spare thousands of low-income New Yorkers the cataclysm of losing one's livelihood as a result of a conviction. In this era of Broken Windows policing, when misdemeanor arrests in the City exceed 225,000 annually, we need strong protections to ensure that these low-level arrests do not completely disrupt whole families due to the loss of a precious job.



It Takes A Community To Raise A Child

127-22 Hawtree Creek Road – Suite #2

South Ozone Park, New York 11420

www.24hrschildcare.com

Office: (347)644-5735/ 5736

Fax: (347)644-5737

12-03-2014.

JOHN 8:7 "He, who is without sin cast the first stone"

As a business owner that's citywide for over 8 years, I have firsthand experience with hiring practices, especially as the jobs that I hire require extra scrutiny – childcare.

It should also be noted that although childcare requires the extra scrutiny once an individual let it be known of their criminal convictions they're still not turned away immediately, based on the nature of the crime and they also take into consideration how old is the crime before a final determination of employment is made.

- existing law requires my employees to be screened, but I'm *still* testifying in support of the bill because:
 - Intro 318, the Fair Chance Act, would **not** change the rules for my employees, as existing law already requires this check.
 - The bill would ensure that, for positions that local, state or federal laws already does NOT require a check, that it be done later in the process, so that all applicants have a
 - "Fair Chance."
- It is also important to ensure that felonies older than 10 years, and misdemeanors older than five years be off limits because the older the crime, the less chance that the person will return to engaging in criminal activity.

Ms. Susan Samuel, PD, SAS, SDA, MS, ED



Testimony for the New York City Council Civil Rights Committee Fair Chance Act (Intro 318) Hearing | December 3, 2014

Submitted by: Marilyn Scales, VOCAL-NY

Hello my name is Marilyn Scales and I'm a leader with VOCAL-NY. First, I'd like to thank Chair Mealy and the Civil Rights Committee for the opportunity to give testimony today.

In 1995, I was convicted on drug charges and spent two years incarcerated upstate. I started using drugs because of a traumatic event in my life, and began selling to support my habit. At that point in my life I needed support services - instead I got separated from my family and the permanent label of felon.

When I came home, all I wanted was a fresh start. I had children to support and bills to pay but I kept getting denied jobs because of my criminal record. My time should have ended when I completed my prison time. Instead, I am looked over and ignored because I am forced to check a box disclosing my criminal history.

The Fair Chance Act would help me to find employment by removing the "Box," asking about my criminal history on job applications. This gives people like me, who have served their time, an equal chance to compete for jobs. We can work to support ourselves and our families. This doesn't give the formerly incarcerated preference to jobs, that's not what we're asking. We're only asking to have the same opportunity for these jobs as anyone else. After the application process, if we have been chosen as the best candidate, then employers have the option to see our criminal history, and we have the chance to discuss our past, including inaccuracies, and our qualifications.

I haven't been in trouble again since being released from prison. I feel like I'm still paying for my crime, still being punished. When can I say that I've finally done my time? I hope it's when the Fair Chance Act is passed.

Thank you.



Testimony for the New York City Council Civil Rights Committee Fair Chance Act (Intro 318) Hearing | December 3, 2014

Submitted by: Victor Fisher, VOCAL-NY

My name is Victor Fisher and I'm a member of VOCAL-NY. Thank you to the City Council for the opportunity to testify today.

I grew up in a poor community in East New York, Brooklyn. The schools were bad and there were few job opportunities. Everyone struggled, and we did what we needed to do to get by. I didn't break the law because I'm a bad person – I did it because I wanted a way out of poverty and to help support my family.

By the time I was 16, I already had a criminal record. This made it even harder for me to get an education and find work. I had no choice but to find other ways to get by, and found myself in and out of jail. I made the best of my time inside – improving my job skills and furthering my education.

Now, I'm 45 years old and I still carry the burden of the mistakes I made when I was a teenager. I don't want to continually be judged by the bad decisions of my youth. I've done my time – and now I want to get a decent job and support myself and my family.

I apply for jobs all the time, but I still can't find work, and I honestly believe it's because of the stigma associated with my criminal record.

Passing the Fair Chance Act means that I can finally show employers that I am more than my criminal record.

Thank you.

FOR THE RECORD



FOR THE RECORD

Testimony for the New York City Council Civil Rights Committee Fair Chance Act (Intro 318) Hearing | December 3, 2014

Submitted by: Brian Pearson, VOCAL-NY

When I came home from prison in 2010, all I wanted was a fresh start for my daughter and me. I knew I couldn't go back to the way I was living before. I already had four felonies, and I couldn't imagine spending more time locked up and away from my family.

I applied for a dozen jobs a day, but on every application I'd have to face my past with one question: "Have you ever been convicted of a felony?" Sometimes I left the checkboxes blank, hoping they wouldn't ask again; other times I'd write, "Yes, will explain in interview," but only twice got the opportunity. Every time, I felt like I was being judged for who I was when I got convicted, not for the person I am today.

Being denied a fair shot at a job over and over again can take a toll on your self-esteem. With so many people telling you that you aren't good enough, you can really start to believe it. I started applying to fewer and fewer jobs and felt like employers would always see me as a felon, not as a person.

However, things changed for me when someone gave me a fair chance. I became involved in a community organization where formerly incarcerated people come together to fight for the right to be included in society. It was after Hurricane Sandy, and there was massive destruction across New York City. Workers were needed to safely clean up the debris and remove mold so that people could return to healthy homes. The group advocated for people with records to be hired for these jobs – and we won! The employers gave me a chance to prove myself in an interview and really got to know what I'm about – not just judge me on my record. I got hired, and now I'm in a union, earning a wage that pays the bills and allows me to provide for my family. I'm incredibly thankful for the opportunity to live a decent life, but I know that there are so many others out there struggling to find work.

That's why I'm active in the campaign to pass the Fair Chance Act in New York City. This legislation would prohibit employers from asking about job candidates' criminal record until they make a conditional job offer. At that point, the employer can ask and make a fully informed decision, knowing the candidate's record but also knowing his or her merits. It's a change that I know would make a real difference for me when I'm looking for a job.

The bill is not law yet, but we have more than 35 co-sponsors in the City Council and a hearing is set for Wednesday. Dozens of community organizations support the bill too. I'm hopeful that it'll pass and that people with criminal records can finally get a fair chance to work.

Our society has created so many barriers for people with criminal records. I'm not saying I didn't make mistakes, but I served my time and now I should be allowed to live just like anyone else. I'm not asking for anything to be handed to me. All I want is a fair chance at a good life. Thank you.



Local Response | National Support

The New York City Council Committee on Civil Rights Wednesday, December 3, 2014 at 10:00AM

Hearing on Int. No. 0318-2014 – A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record or criminal conviction.

Testimony by Dwayne Andrews from Cozen O'Connor Public Strategies, LLC on behalf of AlliedBarton Security Services, LLC.

On behalf of AlliedBarton Security Services, I'd like to thank the Mayor's Office, City Council, and Committee on Civil Rights for their great efforts in safeguarding and protecting the civil rights of all New Yorkers. I am here on behalf of our client AlliedBarton Security Services, the largest single provider of security services in New York. I am here today to testify in favor of making certain modifications Fair Chance Act as it relates to the employment of security officers, supervisors, and management personnel.

As the largest American-owned and managed security company in the US, and largest provider of services in New York City, AlliedBarton is proud to secure the runways at JFK and LaGuardia airports, the World Trade Center Construction zone, Staten Island Ferry, the MTA, including the new Fulton Transportation Center, and over 20 City Agencies, including the Mayor's office. AlliedBarton also secures many prominent commercial buildings in New York City such as the Citi Tower, the AXA Equitable Building, and Time Warner Center; and institutions such as Columbia University and NYIT, among many, many other clients throughout the 5 boroughs.

AlliedBarton prides itself in selecting top talent to secure its client's locations, and strictly adheres to the NY State Laws governing the licensure of security officers, supervisors, and managers; employing over 5000 people within the 5 boroughs of New York City. The basis of this testimony stems directly from the NY State Laws and the Security Guard Act as they relate to the subject of this hearing, the Fair Chance Act.

First, I would like to call attention to The NY State Licensing Law Governing Security Guard Licensure, Article 7-A, Sections 89-f through 89-w, the Security Guard Act. Section 89-g.3 and 89-g.3(a) states, "no security guard company shall knowingly employ to perform security guard functions, any individual who has been convicted of a serious offense, or any misdemeanor in the state which bears such a relationship to the performance of the duties of the security guard."

Section 89-f.13 contains a lengthy list of over 35 felonies classified as "Serious Offenses", which if committed by an applicant, strictly prohibit the applicant from being employed as a security guard by a security company.

Lastly Section 89-g.1.b(ii) states that that security guard companies must certify that they have “exercised due diligence to verify as true, the information contained in the person’s application”

1. Based on the Security Guard Act, security guard companies are therefore prohibited from hiring convicted felons who have committed one of the long list of serious offenses. Because of this stipulation security guard companies must ask a security guard applicant on the application if they were ever convicted of a felony. As a lengthier alternative, the applicant could be asked on the application if they have been convicted of one of the 35 or more felonies listed in the NY State Law. The benefit of having this question remain on the application is that it will constitute a written record by the applicant and is preferable as compared to being asked during an interview, which could be misinterpreted.
2. It should be noted that the attached NY State Law does not specify a time period in which security guard companies should consider for felonies or misdemeanors, therefore section 10.a (ii) of the Fair Chance Act is not applicable for security guard applicants.
3. The Fair Chance Act requirement that the position be kept open for 7 days would also not apply since security guard companies are not able to hire serious offenders anyway.

In order to eliminate any misinterpretations of the Fair Chance Act once enacted, it is requested that a similar clause to the NJ Law be added which lists a few exemptions to the Act; specifically, law enforcement, corrections, the judiciary, homeland security, emergency management, and security personnel governed by the NY Security Guard Act.

Thank you for your consideration of these comments.



**Testimony before the
New York City Council Civil Rights Committee
Regarding Int. No. 318 – NYC Fair Chance Act**

December 3, 2014

Presented By

Sarah Alba (Manhattan Legal Services)

This testimony is submitted on behalf of Legal Services NYC (LS-NYC). LS-NYC welcomes the opportunity to provide commentary on this important Act.

LS-NYC is an anti-poverty organization that seeks justice for low-income New Yorkers. For more than forty 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, LS-NYC is unique because we combine a broad reach with deep roots in the communities we serve. With community-based offices and numerous outreach sites located throughout the city's five boroughs, LS-NYC has a singular overriding mission: to provide expert legal assistance that improves the lives and communities of low-income New Yorkers. We annually provide legal assistance across a full range of issues, helping to ensure that low income New Yorkers have access to housing, health care, food, and subsistence income. We handle almost 20,000 individual cases each year, and our systems change advocacy benefits tens of thousands more. Manhattan Legal Services is a constituent corporation of LS-NYC.

The Fair Chance Act Will Help Employers Comply With Existing Laws and Help Applicants Protect Their Rights

Federal and New York State and City laws already place requirements on employers that consider criminal history when making employment decisions. Article 23-A of the Correction Law provides that most employers cannot deny a job based on a criminal conviction unless they have considered the conviction within a rigorous framework. Both the U.S. Equal Employment Opportunity Commission and the U.S. Department of Labor recommend considering criminal convictions late in the application process as a best practice because having a full picture of an applicant allows employers to rationally weigh the importance of a conviction against what they learn about the applicant's training, abilities, and suitability for the job.¹ By ensuring that employers evaluate applicants individually before considering their criminal history, the Fair Chance Act will help employers comply with existing law.

The Fair Chance Act will also provide applicants with criminal records information to help protect their rights. In a saturated job market, it is difficult for any applicant to determine why he or she was not hired and for those with criminal convictions this can be an especially frustrating process. The Fair Chance

¹ See *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) (*hereinafter* EEOC Enforcement Guidance); and *see, e.g., Training and Employment Guidance Letter No. 31-11*, United States Department of Labor (May 25, 2012).

Act will make the application process more transparent by requiring employers to make a conditional offer before inquiring about criminal history. Employers who take an adverse action because of an applicant's criminal record will provide a written explanation of why that applicant was denied a job after revoking the conditional offer.² This process will give applicants more information about how employers use their criminal history and will allow for a dialog between employer and applicant. Applicants will be given an opportunity to address the employer's specific concerns about his or her criminal history, to correct errors in his or her criminal history, and to determine whether the employer is complying with Article 23-A and other existing anti-discrimination laws.

Without this type of information from the employer, it can be challenging for applicants to understand employment decisions. Many of our clients report difficulty in knowing whether a job was denied based on criminal history, or whether an employer is complying with the law. Our advocates also see clients denied jobs based on inaccurate criminal histories reported by background check or consumer reporting agencies.

Example: Woman Hired at Macy's is Soon Fired Because of Incorrect Reporting of Criminal History

Ms. S. came to our organization after she had been fired from Macy's. She has a long and respectable employment history in retail and had worked for Macy's in the past. As part of the employment application, Ms. S. was asked to sign an authorization for Macy's to check her consumer report. After an interview, Macy's let Ms. S. start working conditionally. A few days after Ms. S. began, the Macy's security team called Ms. S. into their office and informed her that the offer of employment was revoked because her consumer report showed that she had been convicted of passing forged checks in New Jersey. Ms. S. was shocked because she had never been convicted of such a crime and she had no idea why this crime would be on her credit report. Ms. S. was humiliated because she had already started work at Macy's and her colleagues saw her escorted from the building as though she were a criminal. Our advocates assisted Ms. S. in getting the inaccurate information removed from her credit report and clarified the inaccuracy with Macy's. Although Macy's eventually re-hired Ms. S., she was left without wages for the time period it took to correct this mistake. Had Macy's given Ms. S. an opportunity to respond to her alleged criminal convictions before firing her, she could have avoided losing earnings she and her family depend on.

Example: Middle-Aged Man Denied Job after Disclosing Twenty Year Old Conviction

Mr. U. worked in maintenance for years before he was laid off from his job in 2013. Mr. U. has a twenty year old felony conviction, and in the time since that conviction he has worked hard and received a Certificate of Relief from Disabilities. When he applied for a job with a large Manhattan employer he was sure he was qualified and would have no problem getting the job. Mr. U. went on a first and then a second interview, during which he openly disclosed his criminal history. The second interview lasted for three hours and Mr. U. was asked when he could start, introduced to many potential colleagues, and given a tour of the facilities. The interview was so extensive that the client believed it was an orientation for the job. Mr. U. was therefore shocked when he was suddenly told by

² Currently, employers must provide a similar written explanation only upon request *after* the job has already been denied.

the Human Resources Department that the job he had applied for had been filled. Mr. U. then faced a frustrating process that is not uncommon—although an employee told Mr. U. he was not hired because of his criminal history, the employer refused to acknowledge that it considered his criminal history, making it extremely difficult for him to respond to the denial.

The Millions of New Yorkers with Criminal Convictions Have Trouble Finding Jobs

Although New York has firm laws about using criminal histories to make employment decisions, New Yorkers with criminal convictions have trouble finding jobs. In one study conducted in New York City, a criminal record reduced the likelihood of a callback or job offer by nearly fifty percent.³

This study noted a much larger negative effect for black applicants—the criminal record penalty suffered by white applicants was roughly half the size of the penalty for blacks with a record.⁴ This penalty is especially distressing in our City, where blacks experience high levels of policing and high levels of unemployment. Unemployment rates among blacks in New York are nearly twice as high as unemployment rates among whites.⁵ The approximately 23% of New Yorkers who identify as black or African American are disproportionately arrested for all crimes.⁶ In 2013, approximately 52% of those arrested for felonious assault, 62% of those arrested for robbery, 72% of those arrested for shooting-related crimes were black or African American.⁷ 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.”⁸

Disenfranchising millions of New Yorkers, especially New Yorkers of color, benefits no one.⁹ Conviction rates in New York City are staggering; in 2013 alone, New York City counties recorded nearly 190,000 convictions.¹⁰ Encouraging employment of those with criminal records helps to reintegrate them into society and reduces recidivism rates.¹¹

Our advocates report that our clients with criminal records consistently have trouble finding jobs, including clients with low-level and/or old convictions such as those targeted by the Fair Chance Act.

³ Devah Pager and Bruce Western, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men* at 4-5 (Oct. 2009).

⁴ *Id.*

⁵ *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.

⁶ 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).

⁷ Numbers from The New York City Police Department’s 2013 Year End Enforcement Report reporting on arrests from January 1, 2013 through December 31, 2013 available at http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/2013_year_end_enforcement_report.pdf.

⁸ EEOC Enforcement Guidance, *supra* note 1.

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).

¹⁰ *New York City Adult Arrests Disposed*, New York State Division of Criminal Justice Services (April 22, 2014) available at <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf> (citing number of 2013 arrests disposed as “Convicted—Sentenced”).

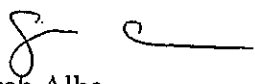
¹¹ Christy Visher, Sara Debus, and Jennifer Yahner, *Employment After Prison: A Longitudinal Study of Releasees in Three States*, Urban Institute Justice Policy Center (Oct. 2008).

Example: Man Denied License Because of Eleven Year Old Misdemeanor Conviction

Mr. Z. applied for a license through the Department of Health after an elderly man he was working with switched medical providers and needed a licensed aide. The man liked working with Mr. Z. and asked him to apply for a license so that they could continue to work together. Mr. Z. openly disclosed his one conviction for a misdemeanor eleven years before in his application. Since the conviction, Mr. Z. worked continuously, including holding many positions working with the elderly without any problems. Mr. Z. even obtained a certificate from the New York State Education Department qualifying him as a home health aide. Mr. Z. was therefore shocked when he received notice from the Department of Health that he was not eligible for employment because of his criminal history, even though that history consists of one decade old misdemeanor conviction.

We thank the City Council for addressing this important issue.

Respectfully submitted,



Sarah Alba
LS-NYC | Manhattan Legal Services
salba@mls.ls-nyc.org
(646) 442 3188



NEW YORK CITY COUNCIL COMMITTEE ON CIVIL RIGHTS

Darlene Mealy, Chair

Members: Mathieu Eugene, Daniel Dromm, Deborah L. Rose and Andy King

A Local Law to amend the administrative code of the City of New York, in relation to prohibiting discrimination based on one's arrest record or criminal conviction

**TESTIMONY OF WESLEY CAINES
BROOKLYN DEFENDER SERVICES**

My name is Wesley Caines, I am the Re-Entry Advocate of Brooklyn Defender Services (BDS), a public defense office that represents more than 40,000 people arrested in Brooklyn each year. All of our clients have had interactions with the criminal justice system and must deal with the continuing unintended collateral consequences of those interactions. The American Bar Association has identified over 38,000 penalties that can impact people long after they complete their criminal sentence¹. These consequences include barriers to housing, education, employment, voting rights, citizenship and public benefits—civil penalties that are rarely considered during the criminal court process. Life-long banishment from employment is not part of any court sentence, yet remains a reality for many of our clients due to persistent discrimination in the workforce. Due to the racial disproportionalities in the criminal justice system, employment discrimination based on criminal convictions has an equally disproportionate impact on communities of color². For this reason the U.S. Equal Employment Opportunity Commission and Department of Labor's Office of Federal Contract Compliance Programs endorses "banning the box" policies as a best practice.

The Fair Chance Act (FCA)³, also known as "banning the box," would prevent employers from unjustly discriminating against people with criminal justice histories and would provide all New Yorkers with an equal opportunity to compete for jobs. It is an extension of current policies already governing City Agencies, and would extend these anti-discrimination measures to private employers. With the passage of this legislation, New York City would join more than ten states

¹ Rodriguez M. and Emsellem M. 2011. "65 Million Need Not Apply: The Case for Reforming Criminal Background Checks for Employment." The National Employment Law Project. New York, NY.

² Western & Becky Pettit, Collateral Costs: Incarceration's Effects on Economic Mobility, The Pew Charitable Trusts (2010).

³ The Fair Chance Act. (2014). Retrieved from <https://fairchancenyc.wordpress.com/>

and over sixty cities and counties in the U.S. that have enacted their own fair chance policies⁴. Four states—Hawaii, Massachusetts, Minnesota, and Rhode Island— extend the policy to all public and private employers, and an increasing number of cities are doing the same, including Buffalo, San Francisco, and Seattle.

The Fair Chance Act is not a handout. It merely bars employers from asking about an applicant's criminal history until they have decided an individual has the qualifications for the job. After a conditional offer of employment is offered, then the employer can do a background check and ask the applicant for information about convictions that may be relevant to the job. Employers may still deny employment to workers with conviction histories that are directly related to the job or pose an unreasonable risk. If, after receiving information regarding the applicant's record, the employer no longer wants to hire the applicant, the employer must provide them with a copy of the record and explain its decision, taking into account existing New York law that prevents employment decisions based on unrelated convictions. Employers that are required by law to conduct background checks and exclude people with specific convictions may still do so⁵. Because the vast majority of criminal background checks contain errors, such as case resolutions and dismissed charges, the Fair Chance Act provides for a process that allows the applicant an opportunity to clear their name from erroneous reporting.

Mayor Bill de Blasio has acknowledged on many occasions how the criminal justice system in New York City has for too long brought undue burdens to families and communities. People of color, in addition to being disproportionately involved in the justice system are more likely to be discriminated against, when compared to similarly situated peers. The Fair Chance Act is an opportunity to reduce some of this impact. The City should remove barriers to success for people who are qualified to work; not only does employment lower recidivism, but 'banning the box' means employers get a broader range of candidates to consider as well.

One study found that in the year after an incarcerated father is released, the total family income drops by approximately 15 percent from what it was before incarceration.⁶ If individuals with criminal records are unable to find stable employment in our communities and they end up re-engaging in criminal activity, the communities themselves suffer too. One study showed that two years after release, employed people were more than twice as likely to have not committed any additional crimes when compared to formerly incarcerated people who were unable to secure employment.⁷ In another study researchers found that formerly incarcerated people who were

⁴ Resources. (2014). Retrieved from <https://fairchancenyc.wordpress.com/resources/>

⁵ Our Annual Report. (2014, January 1). Retrieved from <http://www.nycja.org/>

⁶ <http://www.jstor.org/stable/10.1086/374403>

⁷ Mark T. Berg & Beth M. Heubner, Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism, 28 Just. Q. 382 (2011).

consistently employed throughout the year had a 16 percent recidivism rate compared to a 52.3 percent recidivism rate for all other Department of Correction releases.⁸

By passing this legislation, City Council will prevent prospective employers from throwing out qualified candidates in the initial stages of the application process solely based on the presence of a typically irrelevant criminal history. The bill recognizes the dignity of workers because it provides greater protections for job applicants as they seek re-entry back into society. After a person has paid their debt, additional “collateral consequences,” such as being denied access to work, are overly punitive and serve no legitimate criminal justice or public safety function. It is unreasonable for society to expect individuals to re-enter the community as productive citizens if their job applications are summarily dismissed without an opportunity to meet face-to-face and explain how a prospective employer would benefit from their hiring.

In conclusion, Brooklyn Defender Services supports this bill and urges the New York City Council and Committee on Civil Rights to consider the submitted testimony and pass the Fair Chance Act. We, along with our partnering organizations, seek only a fair playing field for our clients, family members, friends and neighbors. As an added bonus to achieving a greater semblance of fairness, employment stability is a critical factor in the ability of individuals to move beyond the criminal justice system, to reintegrate into their communities, and to begin to build or rebuild a life, for themselves and for the families to which they are returning. Thank you for this opportunity to testify before the Council.

Sincerely,

Wesley Caines
Re-Entry Advocate
Brooklyn Defender Services

⁸ Safe Foundation Three-Year Recidivism Study, Safer Foundation (2008) available at <http://saferfoundation.org/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>.

Hello, my name is Alexander Gomez, and I am a third year medical student at the Icahn School of Medicine at Mount Sinai, and I am here to ask you to support the passage of the Fair Chance Act. The Fair Chance Act represents a long overdue opportunity to give competent and hard-working people access to jobs who would otherwise be unfairly excluded because of a criminal record. I may be training to be a doctor, but hospitals employ many people to serve patients, including nurses, custodians, social workers, mechanics, administrative assistants, cooks—a whole host of professionals. To put in perspective how many people hospitals employ, consider that the Mount Sinai Health System is one of the largest employers in New York City. By instituting fair hiring policies at hospitals, the Fair Chance Act provides access to a great number of jobs. Hospitals are not only large employers, but often tend to be located in communities that bear the brunt of the legacy of racism in our justice system, making fair access to these jobs even more essential. While some might bring up the issue of how this would affect patient safety, this law does nothing to inhibit a hospital or any employer's ability to do a background check.

If a person with a criminal record has gone to the trouble of putting themselves in a position where they might be hired for a sensitive position, it would seem that the easiest conclusion to draw from this is that they are an exceptional individual who has overcome many hardships. Hospitals should be eager to hire such employees. What, some might say, if it were your mother, or your child? Would you want them taken care of by an ex-offender? I would want them taken care of by someone who is competent and kind. This law allows hospitals and other employers to evaluate those qualities before their biases^{1,2} get the better of them.

There is another side of patient safety that hospitals must attend to when they consider who they should hire, and that is the health effect of denying jobs to the most qualified applicants^{3,4}. In the hospital this year, I have learned that there are a few ways you can take care of your patients and many ways you can't. You can give patients' medicine or take them to surgery—but you can't take away their stress,⁵ you can't change their living situation,^{6,7} you can't change their income bracket,⁸⁻⁹ and you can't undo the Rockefeller laws.¹⁰ All of these things are strong determinants of health. So, in the unusual circumstance where we as a healthcare system might have the opportunity to directly benefit someone's health by offering them a job, an income, even health insurance, it would be unsafe not to hire them. Unsafe for them,¹¹ unsafe for their family, unsafe for their children or spouses,¹² and unsafe for the other patients in that person's community. I am not alone in this conviction, it is an idea that is gaining traction across the country: three physicians at Montefiore Medical Center argued in recently made this argument in a prestigious medical journal.¹³

¹ Galdi, Silvia, Luciano Arcuri, and Bertram Gawronski. "Automatic mental associations predict future choices of undecided decision-makers." *Science* 321.5892 (2008): 1100-1102.

² Greenwald, Anthony G., Debbie E. McGhee, and Jordan LK Schwartz. "Measuring individual differences in implicit cognition: the implicit association test." *Journal of Personality and Social Psychology* 74.6 (1998): 1464.

³ Wilper, Andrew P., et al. "The health and health care of US prisoners: results of a nationwide survey." *American Journal of Public Health* 99.4 (2009): 666-672.

⁴ Schnitker, Jason, and Andrea John. "Enduring stigma: the long-term effects of incarceration on health." *Journal of Health and Social Behavior* 48.2 (2007): 115-130.

⁵ Tull, Eugene S., et al. "Relationships between perceived stress, coping behavior and cortisol secretion in women with high and low levels of internalized racism." *Journal of the National Medical Association* 97.2 (2005): 206.

⁶ Gordon-Larsen, Penny, et al. "Inequality in the built environment underlies key health disparities in physical activity and obesity." *Pediatrics* 117.2 (2006): 417-424.

⁷ Thomson, H., et al. Housing improvements for health and associated socio-economic outcomes. Cochrane Database of Systematic Reviews 2013, Issue 2. Art. No.: CD008657.

⁸ Mani, Anandi, et al. "Poverty impedes cognitive function." *Science* 341.6149 (2013): 976-980.
<http://www.sciencemag.org/content/341/6149/976.abstract>

⁹ Stronks, Karien, et al. "The interrelationship between income, health and employment status." *International Journal of Epidemiology* 26.3 (1997): 592-600.

¹⁰ Drucker, Ernest. "Population impact of mass incarceration under New York's Rockefeller drug laws: an analysis of years of life lost." *Journal of Urban Health Bulletin of the New York Academy of Medicine* 79.3 (2002): 434-435.

¹¹ Uggen, Christopher. "Ex-offenders and the conformist alternative: A job quality model of work and crime." *Social Problems* (1999): 127-151.

¹² Western, Bruce, Leonard Lopoo, and Sara McLanahan. "Incarceration and the bonds among parents in fragile families." *Imprisoning America: The social effects of mass incarceration* (2004): 21-45.

¹³ Thill, Zoey, Marce Abare, and Aaron Fox. "Thinking Outside the Box: Hospitals Promoting Employment for Formerly Incarcerated Persons." *Annals of Internal Medicine* 161.7 (2014): 524-525.

NEW YORK HARM REDUCTION EDUCATORS INFO@NYHRE.ORG

155 East 149th Street 2nd Floor Bronx, NY 10451 P: 718.842.6050 F: 718.842.7001

1991A Lexington Avenue New York, NY 10035 P: 212.828.8464 F: 212.828.9105



Testimony of Fernando Vega
IN SUPPORT OF Int. No. 318
Before NY City Council, Committee on Civil Rights
December 3, 2014

Int. No. 318 (Fair Chance Act) - A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record or criminal conviction.

Good Morning New York City Council Committee on Civil Rights,

My name is Fernando Vega and I am in training to become a Peer Outreach Worker at New York Harm Reduction Educators (NYHRE). NYHRE is the largest and one of the oldest syringe exchange programs in New York with over 5,000 participants in the Bronx and East Harlem. I am here today to give my personal support and our organizational support for Intro 318, referred to as the Fair Chance Act.

New York needs the Fair Chance Act because formerly incarcerated individuals, like me, often have a difficult time finding employment. I was convicted of a felony in 1993 and I was incarcerated until 2002. I struggled to find work after I was released, but no one wanted to hire someone with a record.

In 2005 my daughter was born and I knew I had to do whatever I could to provide for her, but I also knew that I needed to stay out of jail to be there for her. I applied for a job at JC Penny in the Queens Blvd. Mall, and when I saw the question asking about my background I decided not to disclose my record. I was worried that if they saw my record they would not hire me. I thought that if I showed that I was a good worker and responsible they would keep me on even after they found out about my past.

I was hired as a supervisor with six people working under me. For three weeks I had good job, making good money, and I felt good about myself. Unfortunately, my background check results came in and I was told that even though I am good worker they had to let me go.

The Fair Chance Act would have helped me stay in that job and provide for my daughter. I know I have made mistakes in the past, but I did my time and I am trying to be a better person and a good father. How can anyone improve their lives when they are locked out of the job market?

The Fair Chance Act is common sense legislation that will not force employers to hire anyone that is unqualified. This intro will also not change current laws that prevent people with certain serious convictions from working in schools, daycares, or other positions. There is NO reason my criminal history should prevent me from working at a mall.

I urge you to vote in favor of Intro 318 to ensure that formerly incarcerated New Yorkers are able to find employment and improve our lives and the lives of our families.

Thank you for your valuable time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Fernando Vega". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Fernando Vega

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Louise McEdward

Address: 147-54 Ash Avenue

I represent: Exodus Transitional Community

Address: 1125 3rd

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ALEXANDER GOMEZ

Address: 50 E 98th St

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/11

(PLEASE PRINT)

Name: Mr. Wayne Sped

Address: Bronx, NY

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12-3-14

Name: Amy Hong & Robert Newman
(PLEASE PRINT)
Address: ~~199 Water St~~ 650 E. 22 St, Brooklyn

I represent: The Legal Aid Society
Address: 199 Water St, NY, NY 10038

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/14

Name: Lawrence Mandelker
(PLEASE PRINT)
Address: Dwight Anderson Ave, NY NY 10017

I represent: Cosmo Cannon 277 Park Ave, NY, NY 10172
Address: Applied Barton Security Services NY, NY 10036

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

Name: Maya Wiley
(PLEASE PRINT)
Address: Administration

I represent: _____
Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 12/3/14

(PLEASE PRINT)

Name: Jonathan Jimenez Perez

Address: 50 East 98th St, NY NY 10029

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: VIE MAE RICHARDSON WHITE

Address: 23 W 145th

I represent: FOR Bill

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 12-3-14

(PLEASE PRINT)

Name: REV. DAMEEN FERGUSON

Address: ~~23rd St~~ 561 E. 65th St Avenue NY 11692

I represent: Faith in NY

Address: 103-04 39th Ave Corona NY 11368

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/14

(PLEASE PRINT)

Name: MARILYN SCALES

Address: 80-A 4th AVE

I represent: VOCAL-NY

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 12/3/14

(PLEASE PRINT)

Name: Molly Kovel

Address: 360 E 161st St, Bronx NY 10451

I represent: The Bronx Defenders

Address: 360 E. 161st St. Bronx NY 10451

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 12/3/14

(PLEASE PRINT)

Name: Janel Quarless

Address: 2-4 Nevins St BKlyn, NY 11211

I represent: Working Families

Address: 3213 Church Ave #2

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/14

(PLEASE PRINT)

Name: Richard Novak

Address: 2460 Frederick Douglas Blvd

I represent: The Doe Fund

Address: 2460 Frederick Douglas Blvd.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 12-3-14

(PLEASE PRINT)

Name: WESLEY CAINES

Address: 937 WHEELER AVE. BX, NY 10473

I represent: BROOKLYN DEFENDER SERVICES

Address: 177 LIVINGSTON ST. BROOKLYN, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Kimberly Howard

Address: 143-36 Farndale Ave Jamaica ny 11435

I represent: myself

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/14

Name: Lawrence Mandelker (PLEASE PRINT)

Address: 415 Madison Ave, NY NY 10017

I represent: NYMRA

Address: 90 Zopf, 11 Penn Plaza NY NY 10036

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/14

Name: Fernando Vega (PLEASE PRINT)

Address: 155 E. 149th St. 2nd Fl. Bronx, NY 10451

I represent: New York Harm Reduction Educators

Address: same as above

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12-3-14

Name: Marilyn Reyes-Scales (PLEASE PRINT)

Address: 1579 Metropolitan ave #66

I represent: LOCAL NY / NYHRE

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 3148 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ALEXANDER GOMEZ

Address: 50 E 98TH STREET #26

I represent: VOCAL-NY

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 0318-2014 Res. No. _____

in favor in opposition

Date: 12-3-14

(PLEASE PRINT)

Name: Robin Richardson

Address: 164 Newell St, Brooklyn, NY 11222

I represent: Urban Justice Center's Sex Workers Project

Address: 40 Rector St. 9th floor NY, NY 10006

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 12-3-2014

(PLEASE PRINT)

Name: Carl Stubbs

Address: 43-23 Cadden St

I represent: VOCAL NY

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Arrives
at hearing
at noon

Appearance Card



I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/14

(PLEASE PRINT)

Name: KATHRYN WYLDE

Address: President and CEO

I represent: Partnership for New York City

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card



I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/2014

(PLEASE PRINT)

Name: Angel Garrido

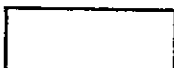
Address: 947 Montgomery St.

I represent: Lower City Tech

Address: 947 Montgomery St.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card



I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Paul Keele

Address: 117 Henry Street #12 New York NY 10002

I represent: Community Service Society

Address: 105 E. 22nd St New York NY 10010

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 12-03-2014

(PLEASE PRINT)

Name: Susan Samuel

Address: 12700 46 Ave Crail Rd

I represent: PT Taker of Community Support Health

Address: Save Health 24 hrs School care

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: NORMAN C. PEARSON

Address: 127-22 Hawthorne Crce/Rd.

I represent: United Vision Marketing Firm

Address: SOUTH OZON PARK, NY 11420

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Barry Campbell

Address: _____

I represent: Fortune Society

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Tani Mills

Address: _____

I represent: Center for Employment Opportunity

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: NANCY PLOEGE MCC

Address: 1375 BROADWAY

I represent: 5 BORO CHAMBERS OF COMMERCE

Address: SAME

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 12/3

(PLEASE PRINT)

Name: Sebastian Solomon

Address: ~~225 Varick St.~~ 145 W 27th St, NYC

I represent: Legal Action Center + ATC Coalition

Address: 225 Varick St, NYC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: 12/3/2014

(PLEASE PRINT)

Name: Gale A. Brewer, Manhattan Borough President

Address: 1 Centre St, 19th Floor NY NY 10007

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 12.3.14

(PLEASE PRINT)

Name: Heather Garretson

Address: 42 Main St Apt 2C

I represent: Researchers on reentry

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 12-3-14

(PLEASE PRINT)

Name: Sarah Albe

Address: 1 W. 125th Street 2nd Fl.

I represent: Legal Services NYC

Address: 1 W. 125th Street 2nd Fl.

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Tsedeye Gebreyelassie

Address: 75 Maiden Lane 10038

I represent: Natl. Employment Law Project

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JACKSON ROCKINGSTON

Address: 1401 Flatbush Ave.

I represent: HABNET CHAMBER OF COMMERCE

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 318 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Angelina Garneva

Address: -121 6th Ave. 6th Floor, New York

I represent: NYC Employment & Training Coalition

Address: _____

Please complete this card and return to the Sergeant-at-Arms