Mayor's Office of Criminal Justice
New York City Council
Committee on Public Safety
October 16, 2017

Good afternoon, Chair Gibson and members of the Committee on Public Safety. My name is Alex Crohn and I am General Counsel for the Mayor's Office of Criminal Justice ("MOCJ"). Thank you for the opportunity to testify today. I am joined by my colleague, Nicole Torres, Deputy Chief of Public Affairs at MOCJ.

The Mayor's Office of Criminal Justice advises the Mayor on public safety strategy and, together with partners inside and outside of government, develops and implements policies aimed at reducing crime, reducing unnecessary arrests and incarceration, promoting fairness, and building strong and safe neighborhoods.

The issues we are here to discuss today should be seen in New York City's larger context. In the last three years in New York City, we have seen an acceleration of the trends that have defined the public safety landscape in this city over the last three decades. While jail and prison populations around the country increased, New York City's jail population has fallen by half since 1990. And in the last three years, the jail population dropped by 18% — the largest three year decline in the last twenty years. This declining use of jail has happened alongside record crime lows. Major crime has fallen by 76% in the last thirty years and by 9% in the last three years. 2016 was the safest year in CompStat history, with homicides down 5%, shootings down 12%, and burglaries down 15% from 2015. Arrests for low-level crimes continue to fall: misdemeanor arrests are down 24% in the last 5 years. Violation arrests down 13% since 2013. And the number of jail admissions for misdemeanor detainees has dropped by 25% since 2014, suggesting we are getting closer to the goal of reserving jail for those who pose a risk. New York City's experience is continued and unique proof that we can have both more safety and smaller jails.

To drive down crime, arrests, and the unnecessary use of jail even further, our office seeks to enhance the spectrum of criminal justice responses available to effectively match criminal justice responses to risk and need. The bills we are discussing today touch on many of the existing efforts the City is undertaking.

Warrants (T2017-6381)

In 2014, approximately 310,000 summonses were handled by the Criminal Court system. Only 27% of these summonses resulted in a conviction. The pressing problem with the current summons court process is the 38% warrant rate for failure to appear in court. This high warrant rate is troubling: it signals that something is not working, if people do not even show up for court. And it has consequences, both consequences for the individuals issued warrants and for the criminal justice system's use of resources. It can mean a police encounter for a low level offense escalating to arrest, leaving an individual with a dampened perspective of the fairness and effectiveness of the criminal justice system.

To address this problem, in partnership with the Court system, the City is already implementing various changes to the summons process to ensure that when criminal summonses are issued, individuals easily understand when and where they need to appear in court. We have also completed a successful pilot of a text message reminder systems that will decrease the warrant rate for failure to appear in summons court.

The Criminal Justice Act, passed by the Council last year and signed into law by the Mayor, went into effect on June 13, 2017 and is an important improvement to the enforcement and adjudication of low-level offenses. By creating the option for officers to issue a civil ticket in response to low-level offenses, such as littering, appropriate low-level cases are bypassing the criminal system altogether, avoiding the possibility of a warrant for failure to appear.

Finally, this summer the Bronx, Brooklyn, Manhattan and Queens District Attorneys dismissed over 600,000 open summons warrants. The staggering backlog of open warrants were vacated, allowing thousands of New Yorkers to live their lives without fear of arrest stemming from low-level warrants issued more than a decade ago.

The City supports the goal of continuing to work with the courts, prosecutors, and Police Department to create a lighter touch on low-level enforcement and reduce any collateral consequences associated with such low-level offenses. While we have concerns about the availability of some of the data that we would be required to report on under this legislation, we nonetheless look forward to our continued partnership on legislative reforms to advance this goal.

Erroneous Criminal Records (Intro. 1636)

Ensuring that individuals do not face unnecessary barriers to leading a stable life is a key element of ensuring that they do not face further involvement with the criminal justice system. As such, the administration is in favor of directing New Yorkers to resources that help lift these barriers such as mechanisms to correct rap sheet errors. However, our office has concerns about any legislation that would require us to establish a system to correct errors that is

contingent on State participation. As such, we look forward to discussing with the Council how best to accomplish the goals of this legislation.

Dispositions of Criminal Enforcement (Intro. 1712)

Finally, Intro. 1712 requires our office to report on the dispositions of criminal enforcement activity. Currently the State's records of dispositions do not link back to enforcement data. Therefore, it is impossible to trace which enforcement agency issued the original arrest that led to a particular disposition. Moreover, disposition data is not under the control of the City. Given these concerns we cannot support this bill.

Thank you for the opportunity to testify here today. I would be happy to answer any questions.

NYPD

Monday, October 16, 2017

STATEMENT OF OLEG CHERNYAVSKY
DIRECTOR, LEGISLATIVE AFFAIRS
NEW YORK CITY POLICE DEPARTMENT

BEFORE THE NEW YORK CITY COUNCIL PUBLIC SAFETY COMMITTEE
COUNCIL CHAMBERS, CITY HALL
MONDAY, OCTOBER 16, 2017

Good Afternoon Chair Gibson and Members of the Council. I am Oleg Chernyavsky, the Director of Legislative Affairs for the New York City Police Department (NYPD). I am joined here today by several of my NYPD colleagues, Chief of Detectives Robert Boyce, Assistant Chief Vincent Coogan from the Transit Bureau, and Jonathan David, Director of the License Division. On behalf of Police Commissioner James P. O'Neill, I wish to thank the City Council for the opportunity to comment on several of the bills under consideration today.

Under this Administration, and with the help of our partners in government, including the City Council, the NYPD has continued to keep New York City the safest big city in the world. Working closely with the community, and making key changes in our operations over the last four years, is bearing fruit in terms of both crime fighting and community connection. The City is seeing dramatic declines in crime: the lowest levels for murder since the late 1950s, the lowest level for shootings on record, capped off with the safest September in the modern era.

While these reductions are historic, what is more meaningful is the manner in which the Department is doing it. The Department has scaled back on arrests and summonses, which have decreased significantly under this Administration. NYPD officers are exercising far more discretion in the use of their enforcement powers and are working closely with communities – policing with them rather than at them. Neighborhood policing is at the heart of the Department's agenda. It is allowing the Department to count the residents of our local precincts among our strongest partners, fostering trust and making our City safer on every block.

Several of the bills under consideration today are of interest to the Department. I would like to provide my comments on the following bills:

Preconsidered Intro. T2017-6705 would require that the NYPD License Division provide applicants for firearm licenses and permits with a warning pertaining to the increased risk of suicide, unintentional death, and death during a domestic dispute, in households with firearms. The NYPD License Division is responsible for the application process, screening, and issuing of various types of handgun licenses, as well as rifle and shotgun permits. Although it is unclear from the bill whether the information in the warning is generated from NYPD statistics or another reputable organization, the Department is supportive of this legislation.

Intro. 1611 would require the NYPD to report quarterly on the clearance rate of index crimes disaggregated by precinct or other patrol unit. While the Department conceptually supports the legislation, we recommend that the definition of "clearance rate" be amended to remove references to individuals charged with the commission of an offense and crimes being turned over to the court for prosecution. As you may know, there are many reasons for why a valid arrest made with probable cause may not ultimately be prosecuted. This could include the withdrawal of cooperation by a material witness, a court's determination that it lacks geographic or legal jurisdiction, or a variety of other reasons.

Ultimately, as arrest data is in the Department's control, unlike data relative to charging and prosecution, amending the definition is critical to the Department's ability to comply with this bill. We look forward to working with the Council on this legislation.

Intro. 1664 would require the NYPD to report on the number of arrests for theft of services under the Penal Law and the number of summonses issued that are returnable to the Metropolitan Transportation Authority's Transit Adjudication Bureau (TAB) for subway fare evasion. NYPD Transit Bureau Personnel deploy in both uniform and plainclothes to enforce theft of services in the subway system. Officers patrol their assigned posts during a tour of duty, these patrols include surveys of subway cars, station platforms, station entrances and exits, as well as station mezzanines where most subway turnstiles are located. Officers are trained to spot a myriad of fare evasion techniques which include jumping over turnstiles, crawling under turnstiles, manipulating turnstiles, entering via the exit only gate, etc. Those observed committing theft of services are subject to a TAB summons, which is a civil summons, or arrest under the Penal Law.

Similar to the recently implemented Criminal Justice Reform Act, in determining whether to take civil or criminal enforcement, the Department determines if the individual is a recidivist. A transit recidivist is generally an individual that meets any of the following criteria: has a prior felony or misdemeanor arrest in the transit system in the past two years; any prior sex crime arrest in the transit system; three or more violation level arrests in the transit system in the past five years; three or more TAB summonses in the past two years; or is on probation or parole. Overwhelmingly, a TAB summons is issued to a person who commits theft of services in the subway system, rather than making an arrest. Citywide, in 2016, nearly 75% of the individuals who committed theft of services in the subway were issued a TAB summons. Year to date, the percentage is relatively the same. The Department demonstrates significant discretion when enforcing theft of services and this practice is consistent with this Administration's concerted efforts to divert people away from the criminal justice system where the circumstances are appropriate.

With respect to Intro. 1664, the Department is committed to transparency and providing more information to the public about enforcement that takes place in the city's transit system. The Department has some initial concerns about the bill as some of the information it seeks is not consistent with how the Department maintains its data. Specifically, in arrest situations, the Department does not track the specific criteria within the transit recidivist definition for why a TAB summons is not issued. Officers in the field are only informed as to whether the individual they have temporarily detained for fare evasion is either a transit recidivist or not. Notwithstanding this challenge, the Department is capable of reporting the remaining data sought and looks forward to working with the Council on this legislation.

Thank you for the opportunity to discuss these bills today. My colleagues and I are happy to answer any questions you may have.

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

Dan Quart
Member of Assembly
73RD District

CHAIR
Commission on Administrative Regulations Review

COMMITTEES
Alcoholism & Drug Abuse
Corporations, Authorities & Commissions
Consumer Affairs
Judiciary
Tourism, Parks, Arts & Sports Development

Testimony of State Assemblymember Dan Quart
On Resolution Number 1660
Before the New York City Council
October 14, 2017

Thank you for the opportunity to speak at today's hearing and thank you to Councilmember Gibson for introducing Resolution Number 1660.

In 1958, the State Legislature enacted the original gravity knife statute to prohibit possession of a World War II era German weapon that opened by the force of gravity. Since then, enforcement of the statute has expanded, primarily in Manhattan, to apply to any common folding knife. As Councilmember Gibson notes in her resolution, between four and five thousand New Yorkers are arrested every year for possession of a simple pocket knife. In effect, a state law has been used by police and prosecutors in one area of the state to outlaw a tool that is perfectly legal in the rest of the state. This practice has left New Yorkers in an untenable situation.

What's worse, these knives are widely available from online retailers and stores outside of New York City, as well as retailers right here in Manhattan. While the Manhattan District Attorney Cy Vance garnered plenty of press coverage in 2010 by cracking down on these retailers, seizing their inventory and fining retailers over $900,000, he never fulfilled his promise to spend that money on a knife education program to inform New Yorkers of what knives he would prosecute them for possessing. How can New Yorkers possibly be expected to understand what knives are legal under these circumstances?

Even more telling, when DA Vance negotiated deferred prosecution agreements with these retailers, he allowed one retailer, Paragon Sports, to continue selling expensive knives that he otherwise would have found in violation of the penal code, simply because they carried a high price tag. As one of his ADAs explained in a deposition, the DA did not believe that expensive knives would be used to commit violent acts, so those knives were exempted. While those who can afford to pay top dollar for a high-end knife have experienced no consequences under this regime, New Yorkers who need an affordable folding knife for work have been arrested and prosecuted in droves since DA Vance took office.

The racial disparities in enforcement practices are equally as appalling. 86% of those arrested and charged with pocket knife possession are Black and Hispanic, and people of color face stronger penalties at each step of the prosecutorial process, from arrest to arraignment to sentencing.

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Over the last several years, I have worked with my colleague, Senator Diane Savino, to pass legislation that would end this plainly discriminatory practice. Our coalition is unprecedentedly broad, including everyone from upstate Second Amendment supporters to Legal Aid and other public defenders, from the Safari Club to the NAACP Legal Defense Fund. The legislation passed nearly unanimously in each house of the legislature. In a time of deep political polarization, New Yorkers from all across the political spectrum and from every corner of the state have come together to say that it is long past time to fix our broken knife laws.

However, no support could have as much impact as that of the New York City Council. Each one of you sees the impact of this discriminatory enforcement every day in your districts, whether your constituents live in Manhattan or simply travel here. Your support of this legislation is a clear message to the Governor that he should stand with the every day New Yorkers, the working New Yorkers, and the New Yorkers of color who have been unfairly affected by this unjust policy, and not with District Attorney Cy Vance. I urge you to vote yes on this resolution.

Thank you for the opportunity to testify.

TESTIMONY OF THE LEGAL AID SOCIETY

The New York City Council Committee on Public Safety

Public Hearing on Criminal Records and Outstanding Criminal Warrants
Int. 1636-2017 and T2017-6381

October 16, 2017

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Introduction

Thank you for the opportunity to testify concerning our clients' experiences with the criminal justice system, particularly with regard to criminal records and outstanding criminal warrants. We submit this testimony in support of Int. 1636-2017 and T2017-6381 on behalf of The Legal Aid Society, and thank Speaker Melissa Mark-Viverito, Council Members Corey Johnson, Vincent Gentile, Vanessa Gibson, and Rory Lancman and the Committee on Public Safety for inviting us to speak about these topics. We applaud the Committee on Public Safety for its concern about the devastating impact erroneous criminal records and warrants can have on the people of New York City and its recognition that the Mayor's Office has authority to order the New York City Police Department ("NYPD) and Department of Correction ("DOC") to correct errors in criminal records and warrants and correct them in a prompt manner.

As stated by Professor James B. Jacobs[1]:

> "Given their importance for establishing an individual's public identity and reputation, and therefore opportunities for employment, housing, and immigration, intelligence and investigative databases, rap sheets, and court records must be accurate and reliable. Erroneous records can cause innocent people to be arrested and searched. They can result in innocent people being wrongly charged and held in pretrial confinement."

Since 1876, The Legal Aid Society has been committed to providing quality legal representation to low-income New Yorkers. We are dedicated to ensuring

[1] JAMES B. JACOBS, THE ETERNAL CRIMINAL RECORD 133 (2015)

that no New Yorker is denied access to justice because of poverty. The Criminal Defense Practice of The Legal Aid Society is the largest defender organization in New York City, representing a very substantial proportion of the persons charged with crimes in New York City. The Criminal Defense Practice's Special Litigation Unit advocates for our clients regarding the collateral consequences of criminal convictions and criminal records and pursues impact litigation and other law reform initiatives on a wide variety of legal matters on behalf of our clients in the Criminal Defense Practice.

Legal Aid's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court, including the majority of those charged as juvenile delinquents. The Special Litigation and Law Reform Unit addresses systemic issues in the child welfare and juvenile justice system, including advocacy on behalf of individuals with a history of contact with the juvenile justice system.

Countless current, future, and former criminal defendants, detainees, and inmates in New York City would be affected if the Mayor's Office of Criminal Justice exercised its authority over those agencies and ordered them to correct and promptly update all erroneous criminal records, including expired criminal warrants, before they are released. At present, the City provides no oversight of NYPD and DOC about how they handle the criminal records they generate and

make available to the public and governmental agencies. Unlike most of the agencies responsible for maintaining records, the NYPD and DOC do not have mechanisms for members of the public to resolve erroneous records. This bill would address that problem, and if amended as proposed below, would additionally benefit those with a history of contact with the juvenile justice system.

It is important that governmental agencies maintain precise criminal and juvenile records to avoid loss of liberty and harmful collateral consequences to criminal defendants and ex-offenders arising from dissemination of erroneous information. Given the City's role in making criminal records public, it has a duty to only disseminate data that is free from mistake or error.

A *Few* Examples of the Impact of Erroneous Warrants in Criminal Records

- Nicholas Bowen: In a case reported in the New York Times[2], NYPD arrested Nicholas Bowen *four* times on a vacated/dismissed warrant that was erroneously issued in 2008.[3]

[2] https://www.nytimes.com/2016/03/29/nyregion/cleared-of-a-crime-but-hounded-by-a-warrant.html?_r=0

[3] Mr. Bowen's first arrest happened after NYPD stopped Mr. Bowen and ran his ID through the system and saw the vacated warrant, which appeared as open. Based on this arrest, Mr. Bowen was jailed at Rikers for several days. At a court hearing, the judge released him. Months later, NYPD again stopped Mr. Bowen and arrested him on suspicion of evading the vacated warrant. A judge again dismissed the case and gave Mr. Bowen a document stating the warrant was dismissed and told Mr. Bowen to show the police the document if he was again stopped. The police arrested Mr. Bowen a third time, for being in a playground after dark. Mr. Bowen showed them the document the judge had given him, but they ignored him. NYPD arrested Mr. Bowen a

Mr. Bowen's case is an extreme example of a problem encountered frequently by Legal Aid attorneys. At least a dozen times a year, on average, the Special Litigation Unit is advised that a client appeared in court after being held overnight in Police detention only because NYPD claimed he was the subject of a warrant, when in fact either the warrant had been vacated, or the warrant was for someone else entirely.

Legal Aid attorneys often are able to secure a letter from a Criminal Court judge, as Mr. Bowen did, stating that the client is not the subject of an active warrant, but even if the client remembers to carry this letter with him at all times, NYPD officers are prone to ignore it.

NYPD's retention of a warrant in its files as "active" after it has been vacated by a court is inexcusable negligence. Our colleagues have suggested practical ways to address this issue, involving better coordination between the NYPD and the courts, and we urge the Council and the Mayor's Office of Criminal Justice to end this harmful practice.

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fourth time, five years after the erroneous warrant had been issued, again over the vacated warrant. At the time, Mr. Bowen was recuperating from surgery and he asked the police for medical help; the police took him in shackles to a hospital. Once again, a judge dismissed the case against Mr. Bowen. Mr. Bowen then sued the City in federal court in 2014. In April 2015, six months after Mr. Bowen had sued the City, NYPD finally removed the vacated warrant from its system.

"Wrong man" warrants are a thornier problem, particularly when identity theft is involved and when the underlying warrant was issued on a summons, and no photograph of the "right" defendant is contained in NYPD files. But there are approaches that can help, especially with modern technology, if responsible officials put their minds to it and recognize that it is a gross injustice to hold a person in custody for 24 hours or more on someone else's warrant.

If nothing else, where the underlying matter is a petty offense or a non-violent misdemeanor, and the suspect contends that he is "the wrong man," NYPD should be required to conduct a diligent inquiry rather than just assuming that the suspect is lying and putting him "through the system."

- C.J.: Our client, C.J., was jailed for a month at Rikers, losing payment of wages during that time, because the DOC Inmate Lookup Service listed an expired warrant. The bail bondsman[4] refused to accept Mr. J.'s family's money when they contacted him to post bail the day after Mr. J. was arrested.

- M.L.: The court denied our client, M.L., eligibility for a drug rehabilitation program because the DOC Inmate Lookup Service listed an expired parole

[4] Despite the statement on DOC's "Usage Policy," bail bondsmen, the courts, and governmental agencies rely on information posted on DOC's Inmate Lookup Service to make important decisions about criminal defendants, detainees, inmates, and ex-offenders.

warrant. DOC personnel have admitted that they are informed when parole warrants are vacated, but DOC still does not act to remove the warrants from its website.

- Robert Colon: In a case reported in the Daily News[5], NYPD twice arrested and detained a Bronx schoolteacher on a warrant pertaining to another man with the same name.

- M.C.: The Bronx Freedom Fund, a partner of Legal Aid, initially was unable to post bail on Mr. C.'s behalf because the DOC Inmate Lookup Service listed an expired parole warrant.

What are the main common errors that we see in many of our clients' criminal records?

- False positive errors, that is, our clients sometimes are identified as having criminal records when they do not;
- Some individuals' criminal records are wrongly attributed to other persons;
- Some of our clients' criminal records (including juvenile records) about dismissed cases or cases that ended in non-criminal violations are not sealed, in spite of laws that require sealing;

[5] http://www.nydailynews.com/new-york/bronx/nyc-teacher-sue-nypd-cops-misidentified-criminal-article-1.2848106?cid=bitly

- NYC DOC's Inmate Lookup Service[6] often has erroneous entries, the most prevalent of which are about expired parole warrants, that often subject our clients to denial of bails/bonds or court-ordered programs, such as drug/alcohol rehabilitation (see cases cited, *supra*);
- Some of our clients' criminal records have multiple entries concerning the same incident, making their criminal histories seem longer;
- Some of our clients' criminal records include incorrect charges;
- Some of our clients' criminal records have the wrong disposition;
- Some of our clients' criminal records state the wrong sentence;
- Some of our clients' criminal records have *no* disposition, so only the charges are stated on the criminal record, and making it seem as if a case still is open; and,
- NYPD wrongfully arrests some of our clients because its own database contains incorrect information about inactive or expired warrants (see cases cited, *supra*).

The following are harmful consequences arising from errors on criminal records and warrants that many of our clients commonly suffer:

- They are denied bail and jailed at Rikers;

[6]http://a073-ils-web.nyc.gov/inmatelookup/pages/common/find.jsf

- They are deemed ineligible for vocational or educational programs in jail, because their record appears to reflect a warrant;
- They are not released to diversion and other court-ordered programs, including drug and alcohol treatment, even after a court has ordered their release;
- They are not offered pleas that accurately reflect their record or lack of a record;
- They are unfairly sentenced;
- They live in fear of routine stops by police or arrests by Immigration and Customs Enforcement.

Erroneous criminal records specifically pertaining to juveniles:

The Legal Aid Society represents youth charged as juvenile delinquents under Article 3 of the Family Court Act. Over time, we have become aware of significant errors in juvenile delinquency records. We urge the City Council to amend the language in these bills to include a definition of "juvenile records" so that those arrested pursuant to the Family Court Act will benefit from the Office of Criminal Justice's efforts to address erroneous criminal records.

As our proposed line editing below reflects, we recommend the following language for the definition of juvenile records. The term "juvenile records" means

records that are obtained and maintained in accordance with the requirements of the New York State Family Court Act and related statutes and regulations, including, but not limited to, records of law enforcement, the Department of Probation, prosecutorial agencies, the Division of Criminal Justice Services ("DCJS") and the Office of Court Administration.

Family Court Act 301.2(1) defines a "juvenile delinquent" as "a person over seven and less than sixteen years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law."

The Family Court has jurisdiction over youth arrested by NYPD under Article 3 of the Family Court Act. Unless the NYPD voids the Article 3 arrest, they must refer the youth to the Family Court to meet with the Department of Probation, in the first instance. The Department of Probation may "adjust" or divert the case from prosecution, if circumstances under Family Court Act 308.1 permit. Should the Department of Probation elect not to "adjust" the arrest, it will refer the matter to the New York City Corporation Counsel's Office for further consideration and prosecution.

At that stage, the Corporation Counsel makes its decision regarding whether it will file a petition with the Family Court charging the youth as a juvenile delinquent or decline to prosecute the matter. Once a petition is filed with the court, the matter will proceed in accordance with the requirements of Article 3 of the Family Court Act until its disposition. At disposition, the court must notify all agencies charged with maintaining juvenile records of the outcome.

The Family Court Act provides certain confidentiality protections, in some instances sealing, and in very rare instances expungement, for youth prosecuted under its auspices. However, at times we have found that the agencies responsible for compliance with these protections fall short, resulting in harmful consequences. Given the variety of agencies responsible for maintaining juvenile records, attempting to resolve erroneous records can be arduous, if not impossible, particularly for unrepresented people.

Our Juvenile Rights Practice has undertaken advocacy with much success with the myriad of agencies responsible for maintaining and affording confidentiality to juvenile records over the last several years. Yet problems persist. The most egregious of these problems occur when youth initially charged as juvenile offenders are in fact either never prosecuted in court or prosecuted in Family Court rather than Criminal Court.

The errors we find originate from several sources, including: the failure of (1) the NYPD to properly void its arrests, (2) the District Attorney's Office and the Corporation Counsel to notify DCJS of its decision to decline to prosecute, (3) the courts to notify DCJS of a decision to remove a case from Criminal Court to Family Court, (4) the Family Court to notify DCJS of its disposition or (5) DCJS to act on such information provided by the various agencies.

We have been contacted by several people seeking to have erroneous juvenile records fixed, including having juvenile arrests removed from their DCJS RAP sheets and FBI RAP sheets. These clients were not even aware of the errors until they were revealed during criminal background checks prepared for employment purposes.

For example, at the age of 23, B.K. contacted our office after he was denied employment with the New York City Department of Education because he purportedly had an open juvenile arrest from 7 years prior. In fact, he had been acquitted of these charges after trial many years earlier in Family Court. He and his mother had tried unsuccessfully for months to correct this error. His record was not cleared until The Legal Aid Society became involved and contacted the Corporation Counsel's office, the District Attorney's Office and DCJS, several times in order to clear this matter from his record.

Recently, we assisted a woman in her early twenties who learned about a purportedly open juvenile arrest when an arrest from ten years earlier appeared in error on her FBI RAP sheet during an employment related background check. Fearing that she would lose the job she was applying for, she contacted the Family Court, where her case had been resolved many years earlier. The court referred her to our office to assist her with clearing her FBI record. We were able to assure her employer that the matter appeared erroneously; however, we are still awaiting confirmation that it has been removed from her DCJS and FBI RAP sheets.

Definitions and proposed line editing for juvenile criminal records:

§ 9-301 Definitions.

As used in this chapter, the following terms have the following meanings:

- Criminal records. The term "criminal records" means any records, maintained in whatever form, related to the arrest, prosecution, or disposition of a matter charging any offense as defined in Penal Law Section 10.00 or any successor provision.[7]

Juvenile records. The term "juvenile records" means records that are obtained and maintained in accordance with the requirements of the New York State Family Court Act and related statutes and regulations, including, but not limited to, records of law enforcement, the department of probation, prosecutorial

[7] Cf. the definition contained in Intro. 1712-2017, also before the Council at today's hearing.

agencies, the division of criminal justice services and the office of court administration.

Office. The term "office" means the office of criminal justice as defined in section 13 of the charter.

§ 9-302 Erroneous Criminal and Juvenile Records.

a. The office shall establish a system through which members of the public or nonprofit organizations may rectify erroneous criminal and juvenile records, including providing direct access to state and local agencies responsible for such records. The office shall take all measures necessary to ensure that the public is aware of such system.

b. The office shall take all practicable measures to ensure the accuracy of criminal and juvenile records and the consistency of such records between state and local agencies responsible for such records, identify the root causes of erroneous criminal and juvenile records, and propose permanent solutions to address such causes.

c. Within 30 days of the beginning of each calendar year, commencing in 2018, the office shall issue an annual report to the mayor and the council, and publish such report on the office's website, regarding actions taken pursuant to this section.

§ 2. This local law takes effect 90 days after it becomes law.

Conclusion:

The Legal Aid Society supports Int. 1636-2017 and T2017-6381, with the amendments we have proposed, because NYPD and DOC need the oversight of the Mayor's Office of Criminal Justice to address criminal records, juvenile records and outstanding criminal warrants. Moreover, MOC-J can play a very useful role, as set out in this legislation, to ensure that city and state agencies, such as the Division of Criminal Justice Services and the Office of Court Administration, work together to see that criminal records are both accurate and transparent. We are eager to work with the Council and with the Mayor's Office of Criminal Justice on how to implement the bill's goals and prevent the harms caused by erroneous criminal and juvenile justice records.

The Bronx Defenders Redefining public defense.

New York City Council
Committee on Public Safety
Hearing
Monday, October 16, 2017
1:00 PM
Testimony of The Bronx Defenders,
by Wesley Caines

Chairperson Gibson and members of the Committee, thank you for the opportunity to appear before you today. My name is Wesley Caines, and I am the Reentry and Community Outreach Coordinator in the Civil Action Practice at The Bronx Defenders. Each year, our office represents tens of thousands of New Yorkers in both criminal cases and against the wide array of civil punishments that involvement with the criminal justice system can trigger. We are widely considered to be among the nation's pioneers of this model of holistic advocacy. We testify today regarding several of the bills before the Committee based on our 20 years' experience.

The Civil Action Practice is designed to defend against the innumerable enmeshed civil penalties that arise out of a person's arrest. As the Reentry and Community Outreach Coordinator, it is my responsibility to address those enmeshed penalties every day. I am on the front lines helping clients who, for example, suddenly find out they have a non-existent "open case" because an NYPD voided arrest or District Attorney's Declined Prosecution were not transmitted to the Division of Criminal Justice Services ("DCJS"). When a prospective employer grants my clients three days to gather documents from multiple government agencies, pursuant to the Fair Chance Act, and those agencies are slow in responding or non-responsive, that's a problem. The arrest and direct punishment imposed by the courts ought to be enough. People should not have to endure additional punitive measures at the hands of their government as they seek to move forward after justice involvement. The pervasiveness of criminal record errors and erroneous warrants may be of little concern to such agencies, but to our clients, and tens of thousands of other New York City residents, these errors have profound consequences.

I will first address criminal record errors, the subject of both Into. 1636-2017 and T2017-6381, which represent a good beginning but are not sufficiently specific to

achieve their goals. The call for a streamlined system of criminal error correction that is public and easily accessible to both individuals and their advocates is long overdue. For far too long government agencies responsible for maintaining such records have been indifferent to the impact such errors have on the lives of the most powerless and marginalized in our society. An estimated *one-third* of criminal records, if not more, contain errors. As the sources of these errors are both state and city government, we can only hope that the City Council's attention and efforts will prompt our state's lawmakers to follow your lead.

Each day our office represents clients, former clients and community members who must deal with the perpetual consequences of justice involvement. Almost everyone who seeks our help in correcting errors is unaware that the errors exist until they face some penalty: they are denied employment, denied a professional license or access to the armed forces, or even improperly arrested.

For this reason, The Bronx Defenders recommends amending the legislation to include annual free criminal record reports to any City resident – or perhaps any resident below an appropriate income threshold – upon request. Just as private credit reporting agencies are required to provided yearly free credit reports upon request, government should do the same here. If such legislation were in effect, one former client would have known a voided NYPD arrest appeared on her criminal record as an open case.

Jessica was in her late teens when she was detained by NYPD along with a male companion. Ultimately released from the precinct with a caution to "watch her company," she had no idea that her arrest had been transmitted to DCJS and a criminal record file opened in her name until, in her early twenties, she applied for a job. Because the job involved working with children, she was required to be fingerprinted and a background check administered. To her surprise, the background check revealed that she had an open criminal case. Because this client was known by her prospective employer, she was able to explain what she thought was the problem and received time to provide proof. For the next two weeks, she went from courthouse to the precinct seeking proof that she did not have an open case, to no avail.

Unfortunately, even after learning of an error, getting documents to correct it can be frustrating, time-consuming, and often impossible within a reasonable timeframe. This is because the agencies responsible for the errors do not make it easy or cheap to access the records. For example, in Manhattan certificates of disposition are free, while in Brooklyn they cost $5 and in the Bronx they are $10. In the case of the NYPD, FOIL

requests are often required to access records, and these can take months to process and receive a response.

Eventually, Jessica connected with me, and the D.A.'s office was able to provide actionable documentation to correct the error. With the documents in hand, she was able to secure her employment. While some may view this story as a success, to the contrary it illustrates what thousands of New Yorkers must endure and navigate in order to move forward after any justice involvement, whether or not it resulted in a conviction. But for her prior relationship with her employer, Jessica would not have been afforded four weeks to correct her non-existent record. But for having someone like me working at a holistic public defender office with the services to assist her in navigating these bureaucracies, her employment opportunity would have been lost. So, far from a success, this client's story illustrates more than ever the need for NYPD reform around voided arrests and mandatory notification to DCJS by D.A.s when they decline to prosecute. OCA should also be routinely informed in these situations, because court clerks are often the first people clients turn to for help, but OCA should be permitted to share information regarding voided arrests and decline to prosecute decisions only with clients and their advocates.

In addition to the annual free records already mentioned, the criminal record and warrant-related bills should also be amended to:

- Mandate the NYPD to direct DCJS to purge any arrest information after 30 days if no further information is forwarded from OCA indicating a prosecution has commenced;
- Mandate the NYC Dept. of Corrections to notify DCJS whenever someone in custody is not produced for a court appearance, if the person's failure to appear leads to the issuance and vacature of a bench warrant, thus purging such warrant from their record;
- Mandate the NYPD to share information with OCA when an arrest is voided, allowing OCA court clerks to removed reference to such arrests on criminal records;
- Mandate that NYPD and DOC respond to requests for documentation regarding criminal record errors within three business days, to align with the time period of the Fair Chance Act, and encourage district attorneys to do the same; and
- Encourage the city's district attorneys to share decline-to-prosecute information with OCA.

We would be pleased to work with Council staff to effect these amendments.

The Bronx Defenders would also like very briefly to express our support for three other matters before the Committee today:

First, regarding Intro. 1664, Councilmember Lancman's bill to require the NYPD to report on the number and location of fare-evasion arrests: it is absurd that it requires legislation for the public to obtain such basic information. Thousands of New Yorkers every year are prosecuted and subjected to deportation when forced to choose between buying Metrocards to get to jobs or court appointments and buying food or medicine. New Yorkers should, at minimum, know where and to whom this happens.

Second, regarding Resolution 1660, Chairperson Gibson's resolution urging the Governor to sign a bill pending on his desk that would effect reform of the gravity knife law: the well-known reality is that people going about their business are being charged with crimes for carrying the tools of their trade, having no idea that such tools are illegal, which they should not be. The bill on the Governor's desk would remove the most egregious provision of the current law, and we urge the Council to push the Governor to sign it.

Finally, as regards Intro. 1569, Chairperson Gibson's bill establishing a municipal disorderly behavior offense: this important bill would render New York's commitment to protecting its immigrant population more real. The analogous state law permits slightly longer jail time, thereby rendering certain New Yorkers ineligible for immigration benefits such as DACA for very low-level convictions. This law – if used by the police and district attorneys instead – would stop this travesty in numerous cases.

Thank you again for the opportunity to testify before you today.

Community Service Society | Fighting Poverty Strengthening New York

Testimony by

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

Before the New York City Council Committee on Public Safety

October 16, 2017

Thank you for the opportunity to testify today in support of Int. 1636, which would amend the administrative code of the city of New York and require the Mayor's Office of Criminal Justice to address erroneous criminal records.

My name is Estee Konor and I am a Senior Staff Attorney at the Community Service Society of New York ("CSS"). CSS is a nonprofit organization with a 175-year history of excellence in addressing the root causes of economic disparity in New York through research, advocacy, litigation, and innovative program models that benefit all New Yorkers. Several CSS programs provide services to the most vulnerable New Yorkers, including justice-involved individuals. Because having a conviction history substantially undermines an individual's chances of full participation in the community, CSS's Legal Department focuses exclusively on advocacy, policy and litigation approaches to combatting criminal records-based discrimination in employment, licensing, housing and civic engagement. Additionally, CSS's Next Door Project helps more than 650 New Yorkers each year obtain, review, understand and correct mistakes in their New York State and FBI rap sheets.

CSS supports the Mayor's Office of Criminal Justice taking steps to establish a system to make it easier to correct criminal record errors:

CSS supports the Mayor's Office of Criminal Justice taking steps to establish a simple, accessible system that can be used by advocates and members of the public to correct criminal record errors. Because there is currently no uniform or standardized system for doing so in New York City, advocates and members of the public must navigate a labyrinth-like process that often requires information to be gathered from various agencies, departments, courts and offices across the city. Obtaining this information can be confusing, time consuming and logistically difficult, if not downright impossible. Sometimes information is not immediately available, but must be requested — and later retrieved — in person at a particular office or court building. One District Attorney's office goes further, and will not permit members of the public to request information in person, instead requiring that information be requested by mail.

Many CSS clients face difficulties when attempting to gather information about their own criminal records so that errors can be fixed. For example – and in particular where official records show that an arrest took place but post no disposition for that arrest – individuals can be required to go to multiple court buildings or government agencies to gather information required to show how the arrest terminated. Additionally, once an individual actually locates the relevant files, clerks or other court personnel sometimes provide inaccurate information. Further, individuals who are not provided a free copy of their Certificates of Disposition can be financially burdened by the $10-per-document fee.

The confusing and time-consuming nature of the process that New Yorkers must currently navigate operates as a barrier to getting criminal record errors fixed. This barrier impedes the ability of justice-involved New Yorkers — and the communities of color that are disproportionately impacted by our City's policing — to move forward after contact with the justice system. We encourage the Mayor's Office of Criminal Justice to engage with CSS and other legal services providers and reentry advocates who help low-income New Yorkers overcome barriers to reentry to establish a system that makes it easier for members of the public and their advocates to correct criminal record errors.

CSS supports the Mayor's Office of Criminal Justice coordinating efforts to ensure that relevant city agencies are responsive to requests to correct mistakes on criminal records:

CSS supports the Mayor's Office of Criminal Justice coordinating efforts to ensure that relevant city agencies are responsive to requests from members of the public and advocates to correct mistakes on criminal records. CSS offers the following suggestions.

First, the Mayor's Office of Criminal Justice should carefully consider the speed with which city agencies should be required to provide information to members of the public or advocates regarding an individual's criminal record, so that production takes place in a meaningful timeframe. In doing so, the Mayor's Office of Criminal Justice should account for the frequently tight timeframes in which individuals must provide employers with information to correct inaccuracies in criminal records, and require that agencies under its purview provide information within timeframes that will allow individuals to productively comply with these requirements.

As already noted, members of the public and advocates must currently navigate a confusing and long process to gather information regarding an individual's criminal record and correct criminal record errors. The fact that getting this information and correcting errors takes such a long time seriously undermines, if not negates, important employment protections established by the Fair Chance Act, passed with strong City Council support and signed into law in 2015. The Act requires that no inquiries about conviction history can be made until a conditional job offer is extended to an individual; after this offer, questions can be asked and a background check can be run. An employer who intends to rescind the job offer based on conviction history must provide the applicant with a copy of any background check used, and an indication of the convictions and circumstances the employer considers problematic. The employer is then required to hold the position open for a minimum of three business days.

During these three business days, the applicant is given the opportunity to correct any mistaken information the employer has received about the applicant's criminal record, provide the employer with evidence of rehabilitation, or both. An applicant will generally be seeing the

background check used by the employer for the first time at this juncture, and it may well contain errors. However, because it is so difficult to get the original source public record information needed to correct the errors, it is often impossible for job applicants to provide potential employers with that information within three business days. This means that, in order for the measures contemplated in this Bill to actually help New Yorkers who are trying to utilize the important protections provided by the Fair Chance Act, city agencies must be required to provide information to members of the public and their advocates very quickly. Otherwise, for individuals with errors in their background checks the Fair Chance Act may fail of its purpose.

Second, regarding voided arrests and declined prosecutions, CSS suggests that the Mayor's Office of Criminal Justice require the NYPD and District Attorneys' offices in the five boroughs to respond to requests for information by immediately providing an on-the-spot letter stating the arrest has been voided or prosecution declined, as appropriate. This letter can then be presented to potential employers to clarify the status of the arrest at issue, or used to substantiate and correct a criminal record error, or both.

Third, it would be helpful for the Mayor's Office of Criminal Justice to coordinate efforts across the five boroughs to ensure local courts' uniform processing of applications for Certificates of Relief from Disabilities. Currently courts in each borough use a different procedure. For individuals seeking Certificates from more than one court and their advocates, the variety of procedures makes for confusion and wasted effort.

CSS Supports the Bill's directive that the Mayor's Office of Criminal Justice take all steps necessary to ensure that the public is aware of the system for fixing criminal record errors:

CSS supports the Bill's directive that the Mayor's Office of Criminal Justice take all measures necessary to ensure that the public is aware of the system the Office establishes for correcting criminal record errors. In order to ensure that the programs contemplated in this bill are effective, it will be important for members of the public to easily obtain information about their own criminal record, understand that information, understand that they have the ability to correct criminal record errors and understand the rights and protections available under New York City law.

In support of this goal, CSS offers the following suggestions. First, we encourage the Mayor's Office of Criminal Justice to engage with CSS and other legal services providers and reentry advocates who help low-income New Yorkers overcome barriers to reentry to provide public education regarding criminal records and legal services regarding criminal record errors. Second, CSS suggests that the Mayor's Office of Criminal Justice take all steps necessary to make the public aware of sealing opportunities available in New York, including sealing under Criminal Procedure Law 160.59, which went into effect earlier this month, as well as the under-utilized Drug Law Reform Act sealing pursuant to Criminal Procedure Law 160.58. Finally, CSS suggests that the Mayor's Office of Criminal Justice engage with CSS and other legal services providers and reentry advocates to provide public education regarding sealing opportunities, and consider allocating funds to these providers and advocates so that they may assist as many New Yorkers as need their services.

Brady Campaign
& Brady Center
To Prevent Gun Violence

Testimony of Brady Campaign and Center to Prevent Gun Violence

Presented by Mariel Goetz, Counsel, Brady Center to Prevent Gun Violence
Submitted to the New York City Council
Committee on Public Safety

October 16, 2017

Re: T2017-6705, A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to disclose gun violence information to applicants for firearm licenses and permits

The Brady Campaign & Center to Prevent Gun Violence is a national leader in strengthening gun laws, policies, and practices in this country. Our mission is to significantly decrease the number of gun deaths and injuries in America. We achieve this through effective policy change by bringing to bear the voice of the American public; changing social norms around the 300 million guns currently in circulation through public health and safety campaigns; and taking legal action to hold the gun industry accountable for dangerous and irresponsible practices.

For over 40 years the Brady Campaign & Center to Prevent Gun Violence have been committed to ending America's gun violence epidemic. The United States stands alone among comparable high-income, populous nations in failing to address this crisis. As a result, every year about 100,000 people are shot in America, about 34,000 of them lose their lives to gun violence – homicides, suicides, and unintentional shootings. This is unacceptable.

Many of these deaths and injuries are preventable. We must address the gun epidemic in a comprehensive, multi-faceted approach, in the same way that America has greatly reduced other public health problems, from auto deaths, to tobacco. That is why Brady is committed to drastically reducing gun deaths and injuries through several approaches, including legislation, litigation, and, importantly, public education.

Unfortunately – tragically – in the past 20 years Congress has done little to protect Americans from gun violence, and has taken actions that expose Americans to more risk, giving bad actors in the gun industry unique immunity from civil liability in many cases where they cause harm, and shielding from public view important data about who supplies crime guns. These backwards steps make state and local legislation all the more important in reducing gun violence.

Brady is proud to support this proposed legislation. While the United States Supreme Court has held that law-abiding, responsible citizens have a constitutional right to a gun in the home for self-defense, the Court recognized that the Second Amendment allows for reasonable regulations – which would certainly include this ordinance. It is unquestionably constitutional. Indeed, gun owners and potential gun owners have a right, and a need, to know the truth about guns.

Warnings about the risks posed by firearms in the home are much needed. Study after study has confirmed that bringing a gun into one's home increases one's risk of suicide,[1] domestic violence-related fatalities,[2] and unintentional shootings.[3]

At the same time as these studies have made the risks posed by guns in the home undeniable, the gun industry has continued to market guns as enhancing safety. This marketing is misleading, as it contradicts the scientific truth about the risks posed by guns. This marketing is also dangerous, as it gives gun owners a misimpression about those risks, and prevents them from making a truly informed decision before exposing themselves and families to the risks posed by lethal firearms.

More dangerous still, studies show that a significant number of gun owners do not safely store their guns, as they should, especially when there are children in the home.[4] When people are under a misimpression as to the risks and benefits posed by having guns in the home, it follows that they will be less likely to feel that it's important to store their guns safely to minimize those risks.

This bill addresses these problems in a way that can be important and impactful. It ensures that gun owners and prospective gun owners will hear some of the truth about the risks that they and their families can be exposed to when they bring a gun into their home. We hope it is enacted and becomes law.

They say the truth can set you free. It can also save lives.

Thank you for inviting us to speak on this important issue.

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[1] Andrew Anglemyer, Tara Hovrath, & George Rutherford, The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-analysis, 160 ANNALS INTERNAL MED. 101 (2014); Arthur L. Kellermann et al., Suicide in the Home in Relation to Gun Ownership, 327 NEW ENGLAND J. MED. 467, 470 (1992); David A. Brent et al., Firearms and Adolescent Suicide: A Community Case-Control Study, 147 AM. J. DISEASES CHILD. 1066, 1066 (1993)

[2] Jacquelyn C. Campbell et al., Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study, 93 AM. J. PUB. HEALTH 1089, 1092 (2003)

[3] Douglas J. Wiebe, Firearms in US Homes as a Risk Factor for Unintentional Gunshot Fatality, 35 ACCIDENT ANALYSIS & PREVENTION 711, 713 (2003); David Hemenway, Catherine Barber, & Matthew Miller, Unintentional Firearm Deaths: A Comparison of Other-Inflicted and Self-Inflicted Shootings, 42 ACCIDENT ANALYSIS & PREVENTION 1184,1186 (2010).

[4] Mark A. Schuster et al., Firearm Storage Patterns in US Homes with Children, 90 AM. J. PUB. HEALTH 588, 595 (2000) (Among homes with children and firearms, 43% had at least 1 unlocked firearm); R. M. Johnson et al., Storage of Household Firearms: An Examination of the Attitudes and Beliefs of Married Women with Children, 23 HEALTH ED. RESEARCH, 592, 602 (2008).

BROOKLYN DEFENDER SERVICES

TESTIMONY OF:

Jared Chausow – Advocacy Specialist
BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on Public Safety

Hearing on Intro 1611, Intro 1636, Intro 1664, Intro 1712, Resolution 1660, two Preconsidered Intros and two Preconsidered Resolutions

October 16, 2017

My name is Jared Chausow. I am the Advocacy Specialist at Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 30,000 clients in Brooklyn every year. I thank the New York City Council Committee on Public Safety, and in particular Chair Vanessa Gibson, for holding this hearing today on legislation and resolutions that relate to index crimes reporting (Int. 1611), Record of Arrest and Prosecution (RAP) sheet errors (Int. 1636), fare evasion arrests and civil summonses (Int. 1664), criminal case dispositions (Int. 1712), outstanding criminal warrants (T2017-6381), so-called gravity knives (Res. 1660), gun violence (T2017-6705) and gun regulation (T2017-6706).

BDS supports Int. 1636, Int. 1664, Int. 1712, T2017-6381, and Res. 1660 and offers recommendations to strengthen some of them below. We take no position on Int. 1611, T2017-6705, T2017-6704, and T2017-6706.

BDS SUPPORTS: Int. 1636 (Johnson) - Requiring the Mayor's Office of Criminal Justice (MOCJ) to address erroneous criminal records and T2017-6381 – Requiring MOCJ to address outstanding criminal warrants.

According to a 2014 report by the Legal Action Center, *The Problem of RAP Sheet Errors*, at least 30% of RAP sheets contain at least one error and some contain as many as ten or more. This finding aligns with our observations. In 2015, our Re-Entry Unit launched a Criminal and Police Record Accuracy Project (CP-RAP) to clean-up RAP sheets upon referral. The most common errors we encounter include:

- missing information about the disposition of cases, or voided or "hanging" arrests, which gives the mistaken impression that they are still open;
- mistaken information about bench warrants, which can lead to unnecessary arrests and increased risk of having bail set;
- information about old non-criminal violations and dismissals that should have been—but were not—sealed according to New York State law;
- and various errors made when different City and State agencies fail to conveuy information accurately, which can lead to wrongful detention and even arrest by Immigration and Customs Enforcement.

Decades of neglect of RAP sheet accuracy is well known in the criminal justice system. One significant factor in the frequency of these errors is the immense size and scope of the record keeping required. According to the Legal Action Center report, New York State maintains RAP sheets for 7.1 million people, with information inputs from dozens of bureaucracies, each of which may use proprietary databases or even paper files. This information is reported to federal agencies as well which further exacerbates the extent of the impact of these data points. This is a massive undertaking, especially given the high stakes of the records, including lifelong job and housing discrimination, deportation, false arrest and imprisonment, and more. Until very recently, there were approximately 1.5 million open arrest warrants in New York City alone, though local District Attorneys agreed to wipe away nearly 700,000 of these thanks to the advocacy and leadership of Speaker Mark-Viverito. The agencies responsible for entering and maintaining arrest and case disposition data have grossly inadequate systems and no real-time quality control measures in place. But mostly, they do not have the will to fix the problems. Despite numerous efforts to work with DCJS, the agency responsible for NYSID sheets, advocates have been consistently rebuffed. Given the extensive damage that befalls people because of these errors, it is time for real change in this process.

Aggravating the problem of RAP sheet errors, the state court system sells many or most criminal records to countless loosely-regulated for-profit online vendors that provide "one-stop shopping" to employers, landlords and others. Each error or omission is therefore amplified on the internet. The non-governmental online vendors typically offer so-called "background checks" at a lower price than DCJS or OCA—e.g., approximately $33 at First Advantage compared to $62 at DCJS' contractor MorphoTrust USA—and provide additional information like global records searches. Therefore, these commercial database searches may be the preferred option for most users. Representatives of DCJS have indicated to us that they do not specifically transmit the corrections we make on behalf our clients through CP-RAP to these private companies, instead arguing it is the companies' obligation to make sure their records are accurate. In other words, nobody is ensuring accuracy and accountability in the vast majority of publicly accessible criminal records.

Based on our experience, it is likely that more errors are recorded, day by day, than fixed. Moreover, the problem of RAP sheet inaccuracies and incomplete entries had already been recognized as a concern by 1991, when the State enacted legislation to automatically seal eligible cases going forward to prevent paperwork lapses, and yet the errors continue to occur. I understand OCA is developing a new Uniform Case Management System that should automatically seal eligible cases that must remain open for a period, such as those that result in an Adjournment in Contemplation of Dismissal. In the meantime, court actors should devise a system to effectively and efficiently confirm sealing where appropriate. It is important to note that the federal database will not be automatically sealed. It is our understanding that thousands of cases that were resolved with a Disorderly Conduct plea in New York State are in a queue at the FBI, waiting to be manually sealed.

Int. 1636 would require MOCJ to serve as a clearinghouse for RAP sheet corrections, analyze the root causes of the errors, and propose solutions, with an annual report on actions taken pursuant to this law. T2017-6381 would require MOCJ to ensure NYPD warrants are consistent with OCA records, establish a means for people to rectify inaccurate warrants, and facilitate the reduction in outstanding criminal warrants. Together, these bills would finally place one agency in charge of wrangling many others to help protect our clients. We support their passage and enactment and thank lead sponsors Councilmember Johnson and Speaker Mark-Viverito.

Additional recommendations:

1.) Every person should have free and easy access to their own criminal records, without having to receive an indigence waiver, so they can check for errors and advocate for themselves as needed. A City agency that has access to these records—other than law enforcement—should provide them free of charge.
2.) The NYPD should be required to include a sunset clause with any fingerprints it sends to DCJS to prevent hanging and voided arrests from appearing on RAP sheets long-term; if the arrest does not lead to a court case within a given time period (e.g. 30 days), it should be purged.
3.) The NYPD should be required to turn over documents needed to aid in clearing up old hanging or voided arrests within three days. Under the Fair Chance Act, employers must give applicants three days to respond to a finding related to a criminal history, and applicants must have a legitimate opportunity to prove that, for example, their records contain erroneous arrest information. Local District Attorneys should likewise be urged to turn over documents related to cases they declined to prosecute within three days.
4.) The Council should call on the State to cease its sale of criminal records to third parties at least until it can guarantee that all of the information it provides is accurate and that all information that should be, or may later become, sealed is not disclosed.
5.) The Council should call on DCJS to expeditiously comb through its records and remove all information that, as reported in the records, should be sealed pursuant to New York State law. People should not have to trek to courthouses and wait in line for a clerk to obtain a Certificate of Disposition that demonstrates exactly what is already in DCJS' own records, which is the current protocol.
6.) As MOCJ publicizes its role in correcting RAP sheets, it should also publicize new opportunities to seal certain old criminal convictions, pursuant to the State's new Raise the Age law. BDS is currently promoting its own services to those seeking assistance

with sealing through our community office, but we assume that most eligible New Yorkers are unaware of this new law.

BDS SUPPORTS: Int. 1664 (Lancman) - Requiring the NYPD to report on the number of arrests and summonses returnable to the Transit Adjudication Bureau for subway fare evasion.

This legislation will require reporting on fare evasion arrest locations and fare evasion summonses, both of which will aid policymakers and the public in evaluating NYPD practices. Ultimately, BDS and many others believe New York City should end the policing of poverty and invest the savings in making transit more affordable to low-income residents. We support the Fair Fares plan backed by the Riders Alliance, the Community Service Society, a majority of the Council, and many others.

BDS SUPPORTS: Int. 1712 (Lancman) - Requiring MOCJ to report on the charges and dispositions of criminal cases.

The quarterly and annual reports generated pursuant to this legislation will help to inform policymakers and public about our criminal legal system. Data is critical to making smart and necessary reforms to the system. We recommend this legislation be amended to require race and ethnicity reporting along with the charge and disposition data.

BDS SUPPORTS: Int. 1569-A (Gibson) – Establishing a Disorderly Behavior violation with reduced penalties.

BDS testified in support of this legislation in April of this year and continues to support it today. BDS appreciates the City's recent efforts to roll back Broken Windows policing and reduce arrest numbers and strongly urges more progress. This policy shift likely saved countless people from unnecessary immigration enforcement and other devastating consequences. Likewise, it is critical that this new non-criminal violation and civil offense not be enforced in addition to any existing summonses.

BDS SUPPORTS: Res. 1660 (Gibson) - Urging Governor Cuomo to sign into law A5667A/S4769A, in relation to gravity knives.

BDS strongly supports A5667A/S4769A and thanks Councilmember Gibson for introducing this important resolution. This bill simply clarifies the definition of illegal gravity knives to make clear that ordinary folding knives like box cutters, used peacefully, are tools, not weapons. These utility knives are commonly sold on-line and in hardware stores to workers and artisans, and only specially trained law enforcement officers are able, often only after several tries, to flick them open by exertion. Nevertheless, New Yorkers are regularly arrested and prosecuted for mere possession of these knives and subject to severe consequences under a vague statute that was intended to criminalize large switchblades.

Our criminal defense attorneys report that nearly every client arrested on this charge is carrying a knife for work. Often, they are maintenance workers, stock room attendants, or other types of laborers. Unfortunately, many cannot obtain verification of their employment because their work is unsteady or informal. The vast majority of BDS clients charged with the relevant offense are Black and/or Hispanic—approximately 86%. Case dispositions vary from client to client, but all are deeply impacted. They suffer the trauma of arrest and contact with the system, including overnight detention in a filthy holding cell and the humiliation of being churned through arraignments and, very often, allocution to a plea deal involving an admission of guilt. They can also lose their jobs and their children, and even face deportation because of these arrests. The criminalization of simple possession of work tools further poisons the relationship between law enforcement and the community and expands the dragnet of our criminal justice system, all without any public safety interest.

As the resolution eloquently states, police and prosecutors have never arrested or charged hardware store owners, such as Home Depot executives, for selling these knives and they continue to be regularly sold throughout the city. This unequal enforcement represents a two-tiered system of justice that both reflects and amplifies broader social inequality.

Client stories:

Mr. B was an 18 year-old freshman math major with a merit scholarship at Pace University when he was pulled over for having tinted windows. Peering inside the car, the officer found a folding knife that Mr. B, who worked at an ice skating rink, used to cut laces. Mr. B, who had no criminal history and zero arrests to date, was arrested and detained. His attorney was able to verify his work-related use of the knife and persuaded the District Attorney's office to offer an adjournment in contemplation of dismissal (ACD) with immediate sealing to protect his scholarship. Nonetheless, untold numbers of online for-profit databases may maintain records indicating that he was arrested for "Criminal Possession Weapon-4th: Firearm/Weapon," and Mr. B has since struggled to find employment, suspecting that employers are consulting these databases.

Mr. R had a fifteen year-old conviction for drug sales and had successfully completed parole. He had trouble getting jobs because of his criminal record, but was eventually able to get and maintain a job for a construction company. After police officers spotted a knife clip in his pocket, he was arrested and charged with possession of a gravity knife. Because of his earlier conviction and court history, the prosecutors were able to convince the judge to set a high bail and Mr. R was incarcerated at Rikers until he eventually plead guilty to the weapons charge just to get out of jail. By that point, he had lost his job.

J, a 22 year-old, was employed in his father's auto repair shop when he was stopped for a traffic violation. Police officers conducted an illegal search and found a knife under his seat. J told the officers that he used the knife to open boxes at work, but he was arrested and charged with possession of a gravity knife, anyway. One of our attorneys met with the arresting officer and the prosecutor in the case to view the knife. After a few failed attempts, the officer was able to flick open the knife, but only with a significant exertion of force. J had never even tried, much less succeeded, in opening the knife this way. (This is very common in gravity knife cases.) Yet prosecutors refused to outright dismiss the case, and J was sentenced to three full days of community service.

Mr. S, a 33 year-old maintenance worker at Brightside Academy, an early childhood education center, was arrested and charged with gravity knife possession and low-level marijuana possession. Prosecutors insisted on Misdemeanors for both charges and Mr. S lost his job after the school received a letter informing them that he was charged with "possessing a weapon/firearm." After repeated requests to the Kings County District Attorney's office, we were able to test the knife and found it to be a locking folding knife and not a gravity knife. Prosecutors then agreed to dismiss the case, and the client successfully sued for malicious prosecution and unlawful seizure, but his employer would not rehire him.

All of the BDS clients cited above were listed as Black and/or "Hispanic" on their arrest reports.

BDS offers comments on T2017-6706 (Mark-Viverito) – Resolution calling on Congress and the President to oppose the "Concealed Carry Reciprocity Act of 2017."

While BDS takes no formal position on this resolution, we note for the record that we have represented clients entangled in the disparate gun regulations that exist between jurisdictions. For example, a veteran from Colorado was arrested in Brooklyn for possession of a handgun that was legally licensed in his home state. He had been unaware of the comparatively strict gun laws in this city. Fortunately, our Veterans Court defense specialist was able to secure a case disposition without any jail time. However, others arrested for this offense are generally processed in the Brooklyn Gun Court and often face far harsher penalties. In fact, when Mayor de Blasio announced this new court in the beginning of 2016, his press release explicitly cited a dramatic increase in average jail sentences that occurred in a previous iteration of a Gun Court—from 90 days to one year. Indeed, we have observed that this court is designed to increase the pressure on our clients to accept harsh plea deals, rather than administer individualized justice. It is unclear what public safety interest is gained by incarcerating people on Rikers Island for an additional nine months.

The Council should also be aware that our attorneys have successfully gotten a number of gun possession cases dismissed based on evidence that NYPD officers had planted the guns, yet prosecutors continue to rely upon these same officers in subsequent cases.[1,2] (I have attached to this testimony one article cited above for your consideration.) Meanwhile, several NYPD officers in charge of gun licensing have been charged by federal prosecutors for allegedly soliciting and accepting bribes, including "cash payments, paid vacations, food and liquor, the services of [sex workers], and free guns." They are entitled to a presumption of innocence, but the Council should monitor the case.

Thank you for your time and consideration of our comments. If you have any questions, please feel free to reach out to me at 718-254-0700 ext. 382 or jchausow@bds.org.

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[1] Stephanie Clifford, In Brooklyn Gun Cases, Suspicion Turns to the Police, The New York Times, Dec. 11, 2014 at https://www.nytimes.com/2014/12/12/nyregion/gun-arrests-with-2-things-in-common-the-officers-and-unidentified-informers.html.

[2] Nick Pinto, The Incredibles: Judges Said These Cops Can't Be Trusted, so Why Does the D.A. Rely on Them?, The Village Voice, Nov. 1, 2016 at https://www.villagevoice.com/2016/11/01/the-incredibles-judges-said-these-cops-cant-be-trusted-so-why-does-the-d-a-rely-on-them/.

the village VOICE

The Incredibles: Judges Said These Cops Can't Be Trusted, So Why Does the D.A. Rely on Them?

by NICK PINTO

NOVEMBER 1, 2016

When Sarah Siegel, a public defender with the Legal Aid Society, picked up the case this spring, it seemed ordinary enough. Her client, a thirty-year-old black man, was charged with possession of marijuana and handgun ammunition, which police said they had found at his East Flatbush apartment. But deep in the case's paperwork, something caught Siegel's attention: an affidavit from a confidential informant — used by police to secure a warrant to search her client's apartment — and the names

of three police officers from Brooklyn's 67th Precinct: Lieutenant Edward Babington, Sergeant Vassilios Aidiniou, and Officer Jean Galliard.

Those names were a clue that this case wasn't as straightforward as it seemed. Looking them up, Siegel found a *New York Times* story from more than a year earlier documenting allegations of a pattern of perjury and evidence-tampering among a small group of police officers in the 67th. The officers would arrest someone, claiming they had noticed them carrying a handgun in public, out in the open, in a plastic bag, or in a bandana. As the cases progressed, the police would add another detail: The arrests weren't only based on chance observation, but were backed up by tips from an informant.

Actual proof of this confidential informant was often scant; paperwork was missing, and when called to present the informant at trial, prosecutors wouldn't be able to. Then there was the lack of forensic evidence. The cops repeatedly failed to test for fingerprints and DNA evidence or to retrieve available security camera footage, so the cases hinged on the cops' testimony alone. And time and again, that testimony was so unlikely and so inconsistent that judges said these officers couldn't be believed.

In December of 2014, when public defenders in Brooklyn first went public with their suspicions about the gun arrests in the 67th, New York was convulsed with protests sparked by the twin announcements that the police officers who killed Eric Garner on Staten Island and Michael Brown in Ferguson, Missouri, would not be charged. With demonstrations in the streets and reporters demanding to know what they were going to do about the allegations against the officers from the 67th, the Brooklyn district attorney and the NYPD announced they were both launching investigations into Babington, Aidiniou, Galliard, and a fourth officer, Detective Gregory Jean-Baptiste (since retired), who collaborated on many of the problematic cases.

Nearly two years later, the *Voice* has learned that both organizations quietly concluded their investigations months ago. The NYPD and the Brooklyn district attorney's office have agreed that there's nothing to see here, and prosecutors are back to making gun cases on the police work of Babington, Aidiniou, and Galliard, who continue to work in the 67th Precinct, an area that encompasses East Flatbush. Which raises a question: If judges say a cop is a repeat liar, but police and prosecutors disagree in a secret report, who are we supposed to trust?

Judges have been throwing out testimony from the police officers in question for nearly a decade, but it wasn't until 2013 that anyone connected the cases. On June 4 of that year Jeffrey Herring was standing outside his apartment building in East

Flatbush. As Herring remembers it, it was one of the nicest days of summer so far, and he'd been enjoying it. He'd taken Snowy, his collie, to play in Lincoln Terrace Park, gotten a flat on his bicycle fixed, and run some errands at the local C-Town and dollar store, then returned home, pausing outside his apartment to talk on the phone with a friend.

That's when the cops rolled up on him, handcuffed him, took him to the 67th Precinct station, strip-searched him, and took turns interrogating him over three or four hours. They wanted to know about guns and drugs in the neighborhood, and if Herring didn't tell them something useful, he says they told him, they would find a way to put him away for years. Herring, then 51, had struggled with drug addiction as a young man and been arrested a few times as a result back in the 1990s, but had gone through treatment, turned his life around, and hadn't gotten so much as a parking ticket in seventeen years. He had nothing to give the police.

At his arraignment, Herring found out he was being charged with weapons possession and got his first glimpse at the police version of his arrest. According to the cops, Officer Galliard was walking down the street when he noticed Herring standing outside his building with a bike and some grocery bags. At the very moment Galliard was walking by, Herring had pulled a handgun out of a translucent white shopping bag and transferred it into another, darker, shopping bag.

There were some puzzling elements to the official version of events. The police never looked for fingerprints on the gun, nor did any DNA testing. Despite four surveillance cameras in the area, the police never collected any video evidence. In short, there was no physical evidence linking Herring to the gun: only the word of Galliard.

More than seven months after his arrest, Herring learned that the police were adding a new wrinkle: They had arrested him based on a tip from a confidential informant. There had been no mention of the C.I. in any of the reports or paperwork surrounding Herring's arrest, and the only documentation the police could provide now was some strangely contradictory paperwork for a $1,000 payout to the informant for helping get a gun off the streets. One letter from two months after the arrest requested the cash payment, to pass on to the informant. Another, from the day before, inexplicably stated that Sergeant Aidiniou and Detective Jean-Baptiste, who along with Lieutenant Babington made up the team Officer Galliard was working with, had *already* received the payment.

Herring's public defender, Deborah Silberman, a senior staff attorney at Brooklyn Defender Services, was suspicious, especially when she learned of a 2012 case

involving Jean-Baptiste and Aidiniou that looked almost identical. As she kept digging, Silberman found more and more cases, stretching back to at least 2007, in which some combination of the same four officers — Aidiniou, Babington, Jean-Baptiste, and another team member, Victor Troiano — made arrests for weapons possession with little to no evidence linking the arrestees to the weapons except the officers' word and the supposed tip-off from mysterious confidential informants. As she connected the dots, Silberman came to believe she was looking at a pattern that suggested people in East Flatbush were getting locked up on the basis of lies and fabrications, and no one — not the NYPD, not the Brooklyn district attorney — was doing anything about it.

Eugene Moore's case was nearly identical to Herring's. Moore was arrested in October of 2012 by a team including Jean-Baptiste and Aidiniou, after officers said they saw Moore with a handgun in a plastic bag hung from the handlebar of his bicycle. After a year in jail awaiting trial — he couldn't afford bail — Moore learned that police were saying they were acting on an informant's tip, even though the paperwork to support this claim was suspiciously thin. When the subject came up at trial, Jean-Baptiste first testified that he was sitting in his vehicle when he got a call on his department-issued phone from a confidential informant he'd worked with "well over thirty times" over the past three years, and that he recognized the call because he had the C.I.'s name and number stored on the phone. But when Moore's lawyer asked if he still had his phone, the story changed. No, he longer had the phone, he testified, and besides, the call actually went to Aidiniou, and anyway he'd "never received a call on [his] phone from that person."

The judge in Moore's case, William Harrington, was unimpressed. Jean-Baptiste had been "extremely evasive to most of the questions," he noted. "The only way I can determine whether the gun was visible is to accept the word of this witness, which I don't find to be credible." Harrington tossed the detective's testimony and ruled the gun inadmissible. The case was ultimately dismissed and sealed.

There were other cases. After ten months in jail awaiting trial based on a similar police story, John Hooper and his lawyer were never told there was a C.I. involved in his arrest. It wasn't until the day of a hearing to determine whether the physical evidence against Hooper had been obtained through an illegal search that Hooper was notified that police claimed an informant had told them when and where they could find Hooper with a gun. Hooper's lawyer asked for a Darden hearing — a proceeding to establish, among other things, whether the informant was actually real — but the prosecution opposed it, and it never happened. Still, the judge in the case, Guy Mangano, didn't buy Jean-Baptiste's version of events.

"Supposedly this defendant doesn't see the police coming but elects out of nowhere to take the object out of his pants pocket and dump it in a garbage can even though he didn't see the police," Mangano said. "And the police officer, based on the shape of the object, knew it was a gun. They then took him into custody before doing any further investigation." It didn't add up, the judge decided. "I find it incredible that they thought it was a gun," he said. "It comes down to credibility whether I believe what this officer was able to see what he saw and reach the conclusions that he did."

The judge held off on making his decision on the case until the next day. But before he could rule, prosecutors came to Hooper with a deal: Plead guilty to a lesser charge and get sentenced to the time he'd already served. Hooper took the deal.

Even when judges did insist that one of the officers' informants present themselves in court, it didn't happen. A 2008 case saw gun evidence dismissed after Babington announced his C.I. wouldn't talk to the court, or even to prosecutors.

Possibly the strongest indictment of this group of officers on record is also one of the oldest. In 2008, Terry Cross was tried in federal court on charges of being a felon in possession of a firearm. The case against him relied on the testimony of Babington, Troiano, and another officer, but their story strained credulity. They claimed they'd arrested Cross after a C.I. fingered him in a photo lineup. But when asked to produce the array in court, what they came up with looked nothing like the output of the photo lineup program used by the NYPD. Judge Dora Irizarry didn't buy it. "The evidence raises substantial doubt as to whether the photo-array identification [by the C.I.] ever occurred," she said. "The bottom line here is that the testimony of the three police officers who testified here was just incredible, and I say 'incredible' as a matter of law," she said. "Frankly, in my view I believe these officers perjured themselves. In my view there is a serious possibility that some of the evidence was fabricated by these officers. ...It's disturbing. It's disturbing. ...These officers are coming here before the court and committing perjury."

In her written opinion, Irizarry went a step further, urging the U.S. attorney's office to "look into this matter and make a determination as to whether or not charges should be brought against these officers for perjury. This is shameful conduct."

There's no evidence federal prosecutors ever took the judge up on her suggestion and investigated the cops. Cross would later sue the city over the episode, securing a settlement of $115,000 in 2010.

Having assembled this disturbing dossier, Silberman brought her evidence to the D.A., but it didn't seem to be going anywhere. Finally, more than a year after Herring's arrest, she took what she'd found to Stephanie Clifford, then a reporter at the *New York Times*. Landing as it did in the middle of a national crisis of confidence in our criminal justice system, Clifford's story stoked a minor firestorm in its own right.

With media reports buzzing about a gang of Brooklyn cops suspected of inventing informants and lying on the stand, pressure was mounting on the Brooklyn district attorney's office. On January 15 of 2015, prosecutors dropped the case against Herring, and then–Brooklyn District Attorney Ken Thompson made a statement to the press: "We will investigate the arrest of Mr. Herring and other arrests by these officers because of the serious questions raised by this case." The NYPD announced it was launching its own Internal Affairs investigation into the officers.

The D.A. was looking into it; the furor died down. In the months that followed, spokespeople for the D.A. would confirm that the investigation was still under way, but would decline to provide any details on its progress, citing its ongoing status. The police department's own Internal Affairs investigation of the officers was similarly opaque. In July of last year, the *Times* reported that "at least one of those investigations was close to its conclusion," according to an anonymous "person in law enforcement familiar with the case." It would be the last anyone outside the district attorney's office heard of the investigation — until Sarah Siegel's case this spring.

Siegel was in a good position to find out the results of the investigations. She knew from her own research that the officers whose search warrant led to her client's arrest had been called incredible by multiple judges, and were under investigation. And so she asked for what is known as Brady material — any information the prosecution may have that might help the defendant assert their innocence. This includes anything that might cast doubt on the credibility of any witnesses or law enforcement officers the prosecution is relying on to build its case.

But when Siegel asked the assistant district attorney handling the case, Laura Green, to turn over the relevant Brady material, Green responded that there was nothing to turn over. As Green would later tell the judge, at a July 11 hearing, "Nothing was turned over because after conferencing the case with the A.D.A. that's in charge of our disclosures, as well as Appeals, there was no Brady turn over." The reason, Green told Siegel on the phone, was simple: The officers' personnel files were clean, and the D.A. had concluded its investigation having found no misconduct.

Siegel wasn't satisfied: She didn't have to content herself with the conclusions the D.A. drew behind closed doors, she argued before Judge Marguerite Dougherty in a July hearing. Case law entitled her to see all the materials used to come to those conclusions — and that meant all of the material of the investigation into the officers. The prosecution balked. "I don't think that would be appropriate, for defense counsel to be able to send the People on a fishing expedition after no wrongdoing has been found," the prosecutor argued.

A compromise was reached: The D.A. would turn over the personnel files and the materials of its own investigation to the judge, for her to review in her chambers, to determine if it contained anything useful to Siegel and her client. Green said she would get the material to the judge the next day. "I imagine it will be fairly voluminous," she said.

The next day came and went. The prosecutor didn't turn anything over. Instead, later that week, she came back to Siegel with an offer. Her client could walk, and as long as he didn't get in trouble in the next six months the case would be dismissed. A few days later, Siegel's client took the deal. With the case effectively closed, the D.A.'s office no longer had to show anyone what its investigation actually looked like.

In one sense, it's hardly unusual that there's been no public announcement from the NYPD about the outcome of an Internal Affairs investigation. Under a controversial New York statute perversely lodged within the state's civil rights code, it's actually illegal for the department to disclose the personnel records of a police officer. If a public school teacher is found to be abusing children, if a sanitation worker is disciplined for harassing passersby, if a bureaucrat is written up for sloppy paperwork, New Yorkers have a right to know about the job performance of the public servants in their employ. But if a police officer chokes a man to death, or plants weapons on people, or is a career perjurer, we are not entitled to know what professional consequences they encounter. In September Mayor de Blasio called on the state legislature to change this law, but it's not at all clear that the political will exists in Albany to do so. The NYPD did not respond to requests for comment for this story.

The Brooklyn D.A.'s investigation is another matter. Thompson, who died of cancer last month, has been widely eulogized as a progressive reformer in criminal justice, in part because he talked with passion about rolling back the machinery of mass incarceration, but also because he did concrete things like increase the resources devoted to his office's Conviction Review Unit, which has exonerated twenty-one people in recent years, six of them set up by disgraced former NYPD detective Louis Scarcella, who's been widely accused of coaching witnesses and messing with evidence on cases from the 1980s and '90s. It may have taken some pressure for

Thompson to announce his inquiry into the officers in the 67th, but, once announced, it's hard to see why the D.A. wouldn't want to be equally public in announcing the conclusion of its investigation. After all, the last the public heard, there were serious questions about the honesty of a group of NYPD officers. If they were in the clear, why not make that news public, both to rehabilitate the officers' names and to reassure New Yorkers that the system was working?

When the *Voice* asked the D.A.'s office about the news that it was admitting in court it had cleared the police officers, a spokesman confirmed that the investigation was concluded in November of 2015, a year ago: "The investigation involved an extensive review of documents, multiple witness interviews, and reviews of surveillance video," the statement read, adding that the investigation "concluded that there was no wrongdoing by any of the police officers involved in the gun arrests in question, and that the allegations that the officers planted guns were categorically false. D.A. Thompson reviewed the report and agreed with the conclusion." Asked just what sort of "wrongdoing" the D.A.'s investigation was concerned with, a spokesman declined to answer on the record, but a source familiar with the inquiry confirmed that its scope was limited to looking for criminal misconduct.

The D.A.'s statement answered some of the questions the *Voice* had asked, but it left many more hanging. If the D.A. was really able to prove that the officers were acting on tips from informants, why was so little evidence of those communications presented in court, and why didn't the informants present themselves when ordered to by a judge? Even if the C.I. tips were real, how did the D.A. ascertain that the guns in these cases really did belong to the defendants, since in each case the only evidence linking them was the testimony of the police? What did the D.A. discover that overcame the conclusion of three separate judges that these officers were not to be believed?

It remains unclear why — if the investigation into the officers of the 67th was thorough and complete — the D.A. was willing to drop a prosecution rather than let a judge see the content of its investigation. Sarah Siegel's case indicates that the D.A. is now back to prosecuting based on these officers' word. Yet if these cops are clean, why drop the case against her client and the one against Herring? Why agree to vacate Hooper's conviction after the fact? If the police are telling the truth, the D.A. let gun criminals go free.

In fairness, prosecutors generally aren't in the habit of alerting the public when they look into someone's conduct and find no wrongdoing. It might have been courteous to let the public defenders who first flagged this issue know that the investigation was concluded. It might have been thoughtful to alert Herring — who's now suing the

police and the city for what happened to him, but who agreed nearly a year ago to suspend his suit pending the outcome of the D.A.'s inquiry — that it was indeed concluded. But it's not strictly the D.A.'s job. However, as recently as this spring, the *Voice* was told there was still an ongoing investigation. It's entirely possible that that was the result of miscommunication within the D.A.'s office. It's also possible that absent any real systems of accountability for police officers, the public's right to know is an abstract notion.

Getting illegal guns off the street has been a longstanding goal for the City of New York. Even as the city's homicide rate has continued to plunge from its peak in the 1990s, the flow of illegal handguns into the city from out of state has continued. Under Mayor Bloomberg, a vocal advocate against gun violence, the recovery of illegal guns was the primary justification for the controversial and ultimately unconstitutional program of stop-and-frisk. Speaking in Aspen last year, Bloomberg articulated his rationale once more, saying the "only way to get guns out of kids' hands is to throw them up against the wall and frisk them."

Mayor de Blasio won election campaigning against stop-and-frisk, though he too is making the recovery of illegal guns a priority. In 2014 the NYPD made more than ten thousand arrests in which the top charge involved a weapons offense. In January of this year, de Blasio announced Project Fast Track, a series of programs designed to further crack down on gun possession and speed gun cases through the courts. "New Yorkers in every neighborhood in this city are united in their desire for safe streets," he said. "To the few individuals responsible for New York City's remaining gun violence, our message is clear: You will be found, and you will be quickly prosecuted to the full extent of the law."

The question facing the mayor, the police, and prosecutors is whether they can ramp up police enforcement and accelerate gun prosecutions without further undermining public trust in the criminal justice system. "The majority of the Bill of Rights has to do with protecting citizens from the power of the state," says Scott Hechinger, a senior attorney with the Brooklyn Defenders who helped Silberman bring her concerns to the D.A. in 2014. "For every one stop-and-frisk or bad search that turns up a gun, there are a thousand more that turn up nothing. So if we're thinking about public safety, you've got to be thinking about the relationship between police and policed. If the Fourth Amendment breaks down, then we become even more lawless."

The fact that the Brooklyn D.A. is evidently back to prosecuting cases based on the word of police officers whom judges have repeatedly found to be giving unbelievable testimony in gun cases should give us all pause, says Silberman.

"If you look at any other field, a physician who lies to a patient, a principal who lies to a bunch of parents, you look at the nanny who a parent suspects hasn't treated a child properly, any parent would say it's not worth the risk," she says. "If you begin to mistrust your doctor because you feel they haven't been completely forthcoming or they haven't followed all the rules they're supposed to, you don't want to go back to that because you don't feel safe with that person. And yet when it comes to police officers engaging in questionable behavior, improper behavior, it seems like we're willing to look the other way."

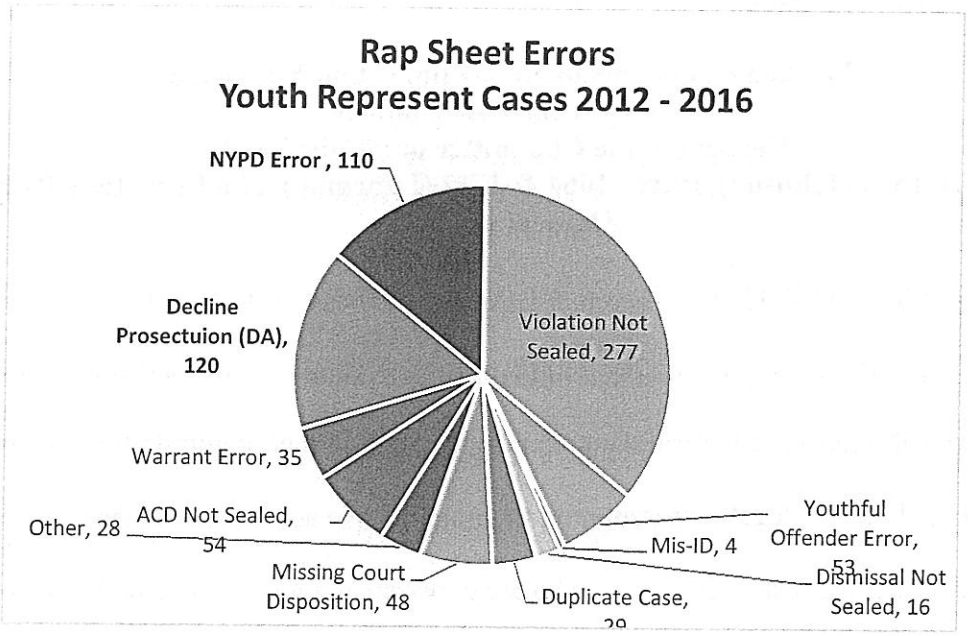
youthrepresent
JUSTICE FROM COURTROOM TO COMMUNITY

Written Comments of Kate Rubin, Youth Represent
New York City Council
Hearing of the Committee on Public Safety
Re: Intro 1636 (Johnson), Intros 1664 & 1712 (Lancman), and Intro 1569 (Gibson)
October 16, 2017

Youth Represent is a holistic youth defense and advocacy organization. Our mission is to ensure that young people affected by the criminal justice system are afforded every opportunity to reclaim lives of dignity, self-fulfillment, and engagement in their communities. We provide criminal and civil reentry legal representation to young people age 24 and under who are involved in the criminal justice system or who are experiencing legal problems because of past involvement in the criminal justice system. Thank you to the committee for the opportunity to provide brief written and spoken comments.

Intro 1636 (Johnson)

In the past five years the attorneys and paralegals at Youth Represent have corrected nearly 800 rap sheet errors. Of these, more than a quarter were what we call "arrest-only" errors: an arrest appears on the rap sheet with no further information. No docket number, no court information, no final disposition. Other errors are more common-- for instance, during the same time period we corrected 277 violations that should have been sealed automatically but were not. But these more common errors, most of which originate with the court system, are much easier to fix. "Arrest-only" errors are notoriously difficult to correct. They happen when the New York City Police Department (NYPD) voids an arrest, the District Attorney declines to prosecute, or when multiple arrest numbers are consolidated under one docket ("hanging arrest").



These are clerical errors, but for a young person trying to move on after an arrest or conviction they can mean a job denial, a college rejection, the inability to rent an apartment. The arrest charge itself looks bad enough, but the lack of further information makes it look like the person never even bothered to show up for court. In other words, rap sheet errors have serious consequences. And when they are nearly impossible to fix, even with the help of an attorney or paralegal, they increase the deep distrust that many young people of color already feel towards the legal system. For these reasons, we support Intro 1636, which directs the Mayor's Office of Criminal Justice (MOCJ) to "establish a system through which members of the public or nonprofit organizations may rectify erroneous criminal records." But in order to address the full scope of the problem, we respectfully urge the Council to go further and include these additional elements in the legislation:

- Direct the NYPD to improve its systems for documenting voided and hanging arrests and for transmitting that documentation to arrestees.
- Specify that both NYPD and MOCJ should work with the Department of Information

Technology and Telecommunications (DoITT) to create streamlined, digital solutions that will allow advocates and members of the public to request and receive simple documentation of voided arrests, consolidated arrests, and declined prosecutions in a timely way.

- Direct MOCJ to collaborate with the Office of Court Administration (OCA) and the Department of Probation (DOP) to streamline the application process for Certificates of Relief from Disabilities through local courts.
- Direct MOCJ to take measures not only to make the public aware of systems for correcting rap sheet errors, but of opportunities to seal criminal convictions. New legislation passed as part of Raise the Age in 2017 (and that went into effect just this month) allows for people with two convictions or fewer to apply to have those convictions sealed after 10 years. MOCJ can play an important role helping to raise awareness of this opportunity to seal records, as well as for existing opportunities for "conditional sealing" of certain drug-related convictions.

While we support Intro 1636, we also must draw attention to the issue of resources. There is no right to counsel for correcting rap sheet errors or for any other legal services related to reentry after arrest or imprisonment. While there is an important role for MOCJ and other city agencies to play improving systems for rap sheet correction, much of the work of obtaining and reviewing rap sheets, identifying and correcting errors, and counseling people about what information must be disclosed will continue to be done by legal services providers like Youth Represent and our colleagues in the Coalition for Reentry Advocates. We understand that supporting this work goes beyond the scope of Intro 1636, but ask that the Council and MOCJ consider the need for legal services when making budget allocations related to rap sheet review.

Intro 1664 & Intro 1712 (Lancman)

In 2016 the NYPD arrested over 25,000 New Yorkers for fare evasion, making it the second most common arraignment charge statewide. Only misdemeanor-level assault was charged more frequently at arraignments.[1] These arrests for "theft of services" were made pursuant to Penal Law 165.15(3), a misdemeanor that carries a maximum sentence of a year in jail. Nearly half of all fare evasion arrests are of youth 25 and under, and over 95% are of people of color.[2] Given the sheer number of these arrests, the disproportionate impact on youth of color, and the stakes involved, it is critical to know much more about them. **For this reason, we strongly support Intro 1664**. We wish to emphasize the particular importance of subsections (d) and (e), which would provide specific information about whether the person arrested was issued a Desk Appearance Ticket and why a summons was not issued. This information, which in the absence of legislation is not publicly available, is essential to oversight of NYPD practice regarding transit arrests, including how officers use the tremendous discretion they have to enforce fare evasion with either criminal or civil penalties. **We also support Intro 1712**, which would require reporting of critical information about the breadth and volume of enforcement actions made by New York City agencies, including pre-trial release status and disposition information.

Intro 1569 (Gibson)

In nearly all circumstances, Youth Represent opposes the creation of new violations;

[1] New York City Criminal Court 2016 Annual Report. Available: https://www.nycourts.gov/COURTS/nyc/criminal/2016-Annual-Report-Final.pdf

[2] Data provided by Division of Criminal Justice Services on 7/27/2017, on file with Youth Represent.

much of our advocacy is for decriminalization. **However, Intro 1569 is an exception and we support this legislation**, which would prohibit "disorderly behavior" and provides for both civil and criminal enforcement options. Because the federal government defines "misdemeanors" as offenses punishable by more than 5 days in jail, minor New York violations like Disorderly Conduct are categorized as "misdemeanors" for immigration purposes and can bar individuals from humanitarian immigration relief. For this reason, we support the creation of a violation punishable by a maximum of five days in jail that will not be misinterpreted by the federal government as a "misdemeanor". We also respectfully suggest an amendment that would require the NYPD to report quarterly on the number of enforcement actions made under the newly created AC 10-177 disaggregated by:

- Race, sex, and age of the subject of the enforcement action;
- Precinct of the officer who initiated the action;
- Subsection of AC 10-177 charged; and
- Whether the civil or criminal penalty was used.

We also support a review, if one has not already been done, of all violations in the Administrative Code with the aim of reducing penalties for any violations that carry a penalty of more than five days of imprisonment.

Community Service Society | Fighting Poverty Strengthening New York

Testimony by

Nancy Rankin, VP for Policy Research and Advocacy
Community Service Society of New York

Before the New York City Council Committee on Public Safety

October 16, 2017

Thank you for the opportunity to testify today in support of Int. 1664 which would require the police department to regularly report data on arrests and summonses for subway fare evasion.

My name is Nancy Rankin. I am Vice President for Policy Research and Advocacy for the Community Service Society of New York (CSS), a nonprofit organization that works to advance upward mobility for low-income New Yorkers.

In New York City, one of the things essential for economic mobility is access to public transit. As MTA fares have risen, one in four poor New Yorkers struggle to afford the buses and subways they must rely on to get to work, seek employment or training, care for their children or simply get around the city. To address this problem we launched a campaign calling for half-price fares for New Yorkers living below poverty that has drawn widespread public, editorial and political support, including from 40 of the 51 members of this City Council.

As we drew attention to this issue, many New Yorkers, and our public defenders pointed to even more serious consequences of prohibitively high transit costs: unaffordable fares combined with aggressive farebeating enforcement, a hallmark of broken windows policing, was annually dragging more than 26,000 people, most of them poor and most of them black or Latino, through the criminal justice system. Arrests can have lifelong consequences, including a criminal record that limits employment, housing, and higher education opportunities, and could put an immigrant at risk of deportation.

These concerns prompted CSS researchers to examine 2016 fare evasion arrest data from the two public defender organizations operating in Brooklyn—The Legal Aid Society and Brooklyn Defender Services—to shed light on how fare evasion policing was affecting our communities. The Brooklyn data paint a stark picture of racial inequality. Individuals arrested were

overwhelmingly people of color: young black men (ages 16-36) represent half of all fare evasion arrests, but are only 13.1% of poor adults living in Brooklyn.

Our full report, *"The Crime of Being Short $2.75: Policing Communities of Color at the Turnstile,* was released today. Authors Harold Stolper and Jeff Jones found that arrests for fare evasion overwhelmingly involve young black men, and are highly concentrated at subway stations located in high-poverty black neighborhoods. While local area poverty levels and criminal complaints are related to fare evasion arrests, neither fully explain this racial disparity.

Subway stations with the highest rate of fare evasion arrests per 100,000 MetroCard swipes were all located in predominantly black neighborhoods near the border of Brownsville and East New York (Junius St. 3, Atlantic Av L, Sutter Av L, and Livonia Av L stations). Fare evasion arrest rates at these stations were between 7 and 35 times higher than rates at stations located in areas with comparable numbers of Hispanic poor residents (around stations in Sunset Park). Similarly, fare evasion arrest rates at stations located in Brownsville and East New York are considerably higher than at other Brooklyn subway stations with similar or even higher numbers of nearby criminal complaints located in areas that are not predominantly black. This suggests that the high rate of farebeating arrests is not merely incidental to the deployment of police to high crime areas.

These troubling findings underline the need to have publicly available data on fare evasion arrests and civil summonses, on a timely, regular basis. The bill introduced by City Council Member Rory Lancman would do just that. It would require the NYPD to release quarterly reports on both the number of arrests for fare evasion, the number of civil summonses issued, and the demographic and location information for those arrests. Having access to data on the number of fare evasion arrests and civil summonses broken down by race and ethnicity, gender and age for each MTA subway station, would allow us to see whether the patterns we observed in Brooklyn are playing out across the city. For the first time we would also have data to ascertain whether less harsh civil summonses that carry a $100 fine follow a different or similar pattern. Moreover, trend data would enable us to assess the impact of announced changes in the prosecution of fare evasion arrests by Manhattan District Attorney, Cyrus Vance, as well as much needed reforms in policing practices.

The city's current approach to fare evasion by New Yorkers who lack $2.75 to cover the subway fare amounts to de facto criminalization of poverty. This is not unique to New York City. Cities like San Francisco, Minneapolis and Seattle are beginning to grapple with the fact that public transportation is being policed in a way that has a disproportionately adverse impact on poor communities of color. Instead of punitive policies that harm our most vulnerable members, and saddle young black and Latino men with criminal records, we should work to make public transit more affordable for all, including those living at or below poverty.

Thank you.

LEGAL ACTION CENTER

TESTIMONY OF THE LEGAL ACTION CENTER

Before

THE CITY COUNCIL COMMITTEE ON PUBLIC SAFETY

PUBLIC HEARING ON

ADDRESSING ERRONEOUS RECORDS

AND OUTSTANDING CRIMINAL WARRANTS

Monday, October 16, 2016

Submitted by

Kate Wagner-Goldstein
Senior Staff Attorney

My name is Kate Wagner-Goldstein. I am an attorney at the Legal Action Center, a public interest law and policy organization specializing in issues involving the criminal justice system, alcohol and drug addiction, HIV/AIDS. I would like to thank the Committee for holding this hearing and to Council Members Johnson, Gentile, Gibson and Mark-Viverito for sponsoring these two important bills – the bill requiring the Mayor's Office of Criminal Justice to address erroneous criminal records and the separate bill requiring them to address outstanding warrants. More generally, we appreciate the City Council's support for criminal justice reform, including the funding it has provided for alternatives to incarceration and reentry services. For the past thirty years, Legal Action Center has helped New Yorkers with criminal records gain employment and housing, and your funding has helped us continue that effort, including working with people to identify and correct errors on their criminal records.

I will start with the bill to address erroneous criminal records, Int. No. 1636. Erroneous criminal records are a huge problem for New York City residents. By some estimates, approximately a million residents have a criminal record. More than 30% of them, hundreds of thousands of people, are likely to have errors on their record.[1] These errors can derail people's lives, preventing them from getting jobs, licenses, housing, or sometimes dealing with even more personal matters like being able to formally adopt grandchildren. Errors are currently incredibly time consuming to fix, requiring hours traveling in person to try to obtain documents, often going to multiple offices. And there are certain types of errors that are currently almost impossible to fix, even for offices like ours with extensive experience in this area.

When the City Council held a hearing on the problem of RAP sheet errors last year, one of our clients testified about his efforts to correct his record. He had three arrests that had never been prosecuted but still appeared. He went to the court where there was no record of the case. He was then sent to the police precinct to talk to the arresting officers – a very daunting process to say the least. He was told the officers were not available and he was sent to One Police Plaza where he was directed to multiple different floors and departments, none of which had information about his arrests or the ability to help. It was only when the Legal Action Center was

[1] See "The Problem of RAP Sheet Errors: An Analysis by the Legal Action Center," available at https://lac.org/resources/criminal-justice-resources/rap-sheet-resources-get-correct-seal-criminal-records/the-problem-of-rap-sheet-errors.

able to directly contact someone higher up that his record was sealed. But not everyone finds their way to our office, and even if they do, we also run into barriers.

We need a centralized process for correcting errors on OCA records to address this problem. The Mayor's Office of Criminal Justice ("MOCJ") could play a valuable role coordinating error correction efforts among the various agencies. They have experience taking on this type of coordinating role with a similar range of agencies, for example as in integral part of the Justice Reboot initiative to modernize the criminal justice system. MOCJ can work with each agency to ensure processes are in place to provide the documents that are required to correct various types of errors, and the process should operate electronically so people do not need to appear in person in each office to obtain the required documents.

MOCJ's role coordinating these efforts would not supplant the work of legal service providers. Service providers still need resources to help individuals identify errors on their rap sheets and start the process of error correction, but our work will be much more efficient and have greater impact if error correction is streamlined.

We applaud the bill's requirement that MOCJ ensure the public is aware of the error correction system. As part of this publicity effort, we ask that the bill also require that MOCJ publicize New York's brand new law allowing people to seal certain criminal convictions that went into effect last week.

As part of this bill, the New York Police Department should also be required to create an easily accessible and publicized process to provide the documents needed to correct certain errors. They alone have the documentation necessary to correct certain types of errors and it can be very difficult to obtain it from them.

In general, all agencies should produce the documents needed for error correction within 2 days. New York City's Fair Chance Act requires employers to hold open jobs for three days while applicants attempt to address concerns regarding their criminal background. Sometimes, applicants need to correct criminal record errors, so they should be able to accomplish that within the three day time period.

The Legal Action Center also strongly supports the bill requiring the Mayor's Office of Criminal Justice to address outstanding warrants. Inaccurate warrant information and open warrants are a huge problem in New York City. It is essential that the Police Department's

records of outstanding warrants are kept up to date, and that New Yorkers have more opportunity to vacate their warrants.

We thank you again for your commitment to these issues and welcome the opportunity to continue to work with you on this matter.

THE LEGAL AID SOCIETY

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Legal Aid Society Memorandum

To: NYC Council
From: The Legal Aid Society
Re: A5667A, Gravity Knife Reform Legislation
Date: October 16, 2017

NYPD's Gravity Knife Arrest Practices Discriminate on the Basis of Race

Every year retailers throughout New York State such as Walmart, Lowes, Ace Hardware, AutoZone, Dicks Sporting Goods, Sports Authority and Paragon Sports, and major websites such as Amazon.com, sell thousands of folding knives that are designed and marketed as tools, not weapons. Most New York State prosecutors treat folding knives just as they are designed, as tools. But in New York City, police and prosecutors torture P.L. § 265.00 to categorize the very same folding knives as per se weapons.

NYPD does not arrest retailers who possess and sell folding knives, but has arrested tens of thousands of New Yorkers who purchase them. In most cases, New Yorkers arrested under the statute are charged with a violation of P.L. § 265.01(1), a Class A misdemeanor that carries a penalty of up to one year in jail. That provision requires proof that a defendant merely possessed a gravity knife, not that he or she possessed it with intent to use unlawfully.

According to NYPD data 86% of those arrested for possessing folding knives and charged with gravity knife possession in violation of P.L. § 265.01(1) are black or Latino.[1]

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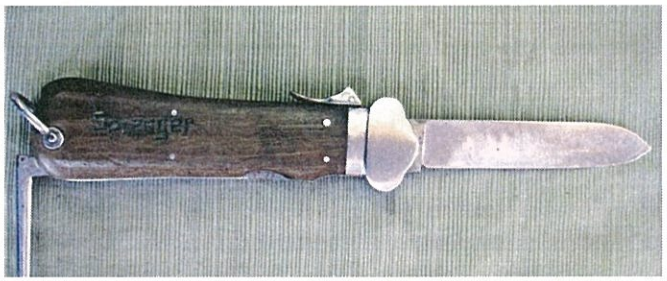
[1] Jon Campbell, *How a 50s Era New York Knife Law Has Landed Thousands In Jail*, The Village Voice.

Such discriminatory enforcement creates an absurd disparity: NYPD treats folding knives as tools when displayed on the shelves of major retailers but as illegal weapons once in the hands of black and Latino New Yorkers. NYPD's practice creates a massive pool of unwitting minority targets that have no reason to believe that they are subject to criminal liability when they purchase a folding knife at a major retailer.

Historical Background of New York State's Gravity Knife Statute

In 1958 New York State Legislature enacted Penal Law § 265.00(5), criminalizing possession of "any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device."

At the time of the original ban, the Legislature sought to prohibit a WWII era German weapon that opened by force of gravity:[2,3]



The operation of the original gravity knife can be viewed here: http://bit.ly/2vQVXf6

Since New York's 1958 gravity knife ban, the federal government banned the weapon as well, leading to its virtual extinction.

As the original gravity knife disappeared from the market, most prosecutors in New York State stopped bringing gravity knife prosecutions under the statute. According to a spokesperson for the District Attorneys Association of the State

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[2] *Id.* http://www.villagevoice.com/news/how-a-50s-era-new-york-knife-law-has-landed-thousands-in-jail-6662589

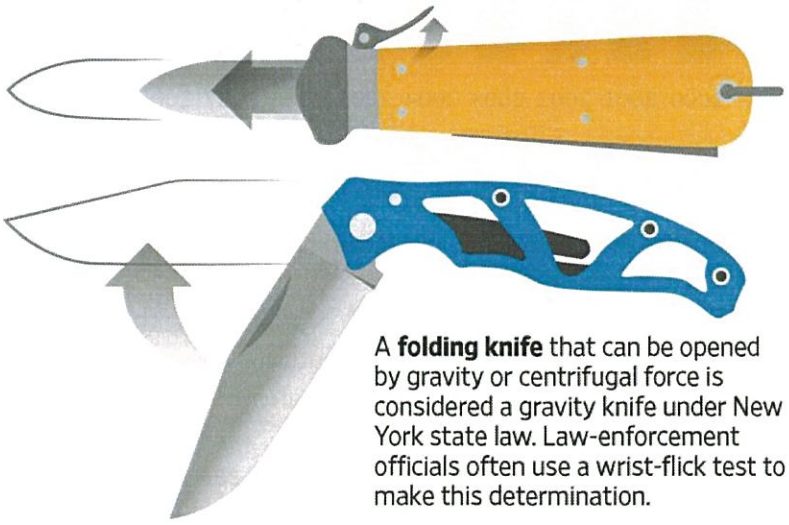
[3] *Ban Asked On Teen-Agers' Weapons, N.Y. Times*, February 7, 1958.

of New York, most prosecutors in the state "have not prosecuted a gravity-knife case, or haven't prosecuted one in 30 years."[4]

Unlike police and prosecutors outside of New York City, NYPD takes advantage of a loophole in the law, treating common folding knives as illegal gravity knives. NYPD employs a wrist-flick test to determine whether a knife constitutes an illegal gravity knife. The difference between the original gravity knife and the folding knives that NYPD arrests New Yorkers for is illustrated here:

What Is a Gravity Knife?

During World War II, German military engineers designed the original **gravity knife** for paratroopers who might need to cut themselves free of their parachutes while they were injured, stuck in a tree or had limited use of their hands. The user pressed a button or other mechanism, which would make the blade slide out by force of gravity.



A **folding knife** that can be opened by gravity or centrifugal force is considered a gravity knife under New York state law. Law-enforcement officials often use a wrist-flick test to make this determination.

Source: Court documents

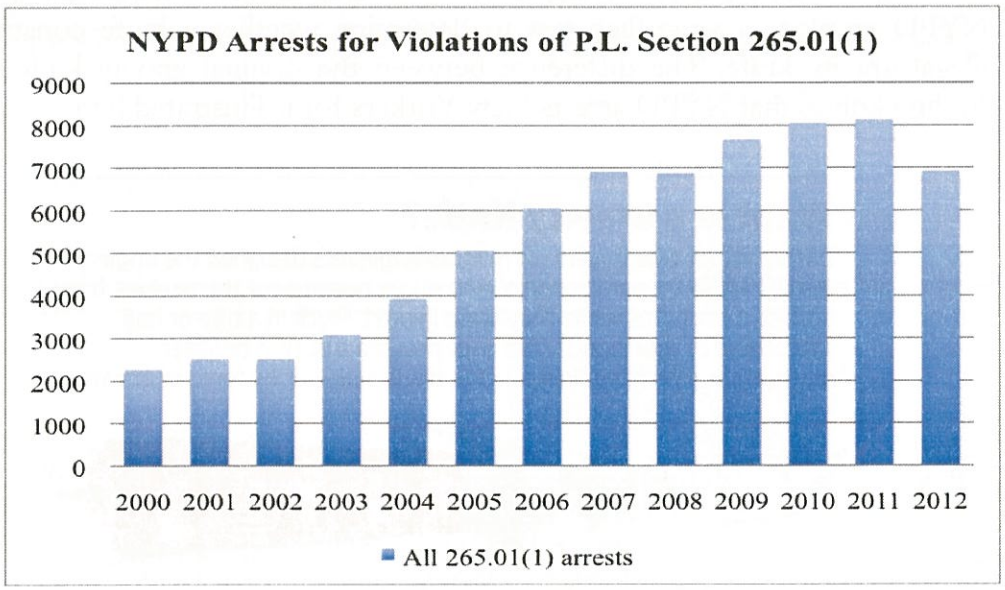
THE WALL STREET JOURNAL.

Under NYPD's wrist-flick test, if a police officer can force a knife open with the flick of a wrist, a defendant is considered guilty of gravity knife possession, even where the knife is not designed to open in that manner. The result of the test is that criminal liability turns on the subjective athletic skill of police officers, not the design or intended use of a knife.

NYPD's tortured interpretation of the statute has resulted in tens of thousands

[4] Jon Campbell, *How a 50s Era New York Knife Law Has Landed Thousands In Jail*, The Village Voice.

of gravity knife prosecutions in recent years. According to NYPD arrest data, from 2000 until 2012, NYPD made 69,999 arrests for alleged violations of P.L. § 265.01(1), New York State's statute that criminalizes possession of a host of weapons including gravity knives.[5]



According to a 6-month sample of criminal complaints analyzed by the Legal Aid Society, 69% of those arrested for violations of P.L. § 265.01(1) were charged with alleged gravity knife possession.[6] Notably, of that sample, less than 2% involved additional allegations that defendants possessed the so-called gravity knives with intent to use unlawfully against another.

Legal Aid Society felony level data from the second half of 2016 shows that gravity knives were used in the commission of violent felonies in ***less than one***

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[5] P.L. § 265.01(1) bans possession of the following weapons: firearm, electronic dart gun, electronic stun gun, ***gravity knife***, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken or "Kung Fu star."

[6] Because arrest data is classified by penal law section, not weapon type, the number of gravity knife prosecutions can only be determined by reading each criminal complaint. According to data compiled by LAS, from July 1, 2015 until December 31, 2015 DANY prosecuted 363 LAS clients for violations of P.L. § 265.01(1). Of those, 254, or 69%, were for alleged gravity knife possession. Of the 254 charged with gravity knife possession, only four were also charged with violations of P.L. § 265.01(2), possession of a weapon with intent to use unlawfully against another.

percent of cases. Other weapons were recovered during the commission of violent felony offenses far more often than gravity knives:

- firearms
- kitchen knives
- glass bottles
- bats

Items that were charged as weapons at similar rates to so-called gravity knives were

- canes or crutches
- razor blades
- belts
- pipes
- glass/ceramic object
- brooms

Legal Aid data can be viewed here in its entirety: http://tabsoft.co/2s5ucz9

The New York State Legislature never intended that folding knives, designed as tools, be prosecuted as illegal gravity knives, nor did it intend that criminal liability turn on the athletic skill of police officers.

The Legislative Intent of A5667A

This year, in response to NYPD's tortured interpretation of the gravity knife statute, the Legislature overwhelmingly passed A5667A (Assembly 136-1, Senate 61-1): https://www.nysenate.gov/legislation/bills/2017/a5667/amendment/a That legislation removes centrifugal force from the definition of a gravity knife and, as a result, will bring an end to NYPD's use of the wrist-flick test.

Although the bill enjoys broad bi-partisan support throughout New York State, its signature by Governor Cuomo and enactment into law remains uncertain without more vocal support from leaders throughout the state.[7]

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[7] Manhattan District Attorney Cyrus Vance Jr. has lobbied against changes to the definition of a gravity knife for many years: http://www.nytimes.com/2016/06/06/opinion/keep-the-ban-on-gravity-knives.html?_r=0

New York County District Attorney's Office Practices Aggravate Racial Discrimination

In 2010 DANY entered into deferred prosecution agreements with New York County retailers that were selling common folding knives that DANY claimed were illegal gravity knives.[8] Although retailers were selling folding knives, not the WWII-era gravity knife originally banned by the Legislature, the retailers agreed to pay a total of $1.9 million dollars to defer prosecution. None of the store managers or owners were arrested for possessing and selling what DANY and NYPD considered illegal weapons.

At the time of the 2010 deferred prosecution agreements DANY announced that it would commit itself to monitoring local retailers, initiate a knife buy-back program and spend $900,000 of the seized settlement money to fund a knife education campaign.

To date, more than $800,000 of the pledged $900,000 remains unspent.[9] The DA's office never organized a knife buy-back program or knife education campaign. Common folding knives—that NYPD arrests thousands of black and Latino New Yorkers for possessing—continue to be available at major retailers throughout the New York City and New York State, including Manhattan.

Examples of gravity knife prosecutions and where similar knives, or in some cases identical knives can be purchased in New York City are found below:

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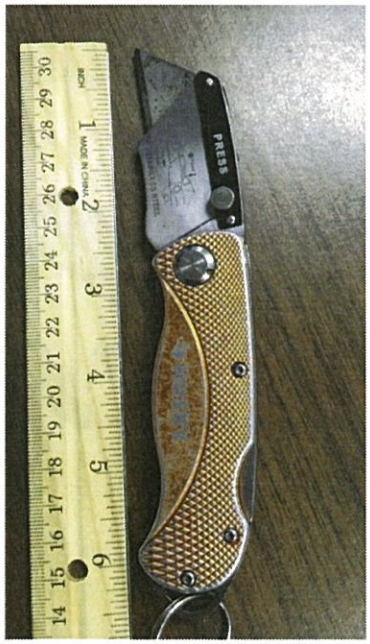
[8] John Eligon, *14 Stores Accused of Selling Illegal Knives*, N.Y. Times, June 17, 2010 http://www.nytimes.com/2010/06/18/nyregion/18knives.html

[9] Jon Campbell, *Did Authorities in New York City Lose More than 1,300 Confiscated Knives?*, Village Voice, May 21, 2015 http://www.villagevoice.com/news/did-authorities-in-new-york-city-lose-more-than-1-300-confiscated-knives-7212758

Husky Utility Knife, Felony Prosecution
Latino Defendant

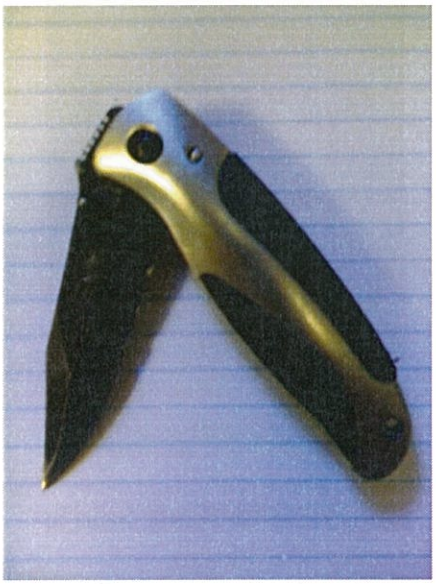
Kobalt Utility Knife Sold at Lowes
Lowes Manhattan

Husky Utility Knife, Felony Prosecution
African-American Defendant



Kobalt Utility Knife Sold at
Lowes Manhattan

Sheffield Folding Knife, Felony Prosecution African-American Defendant



Appalachian Trail Knife Sold at Lowes, Brooklyn

Kershaw Carabiner Keychain With Fold-Out Knife, Felony Prosecution Latino Defendant

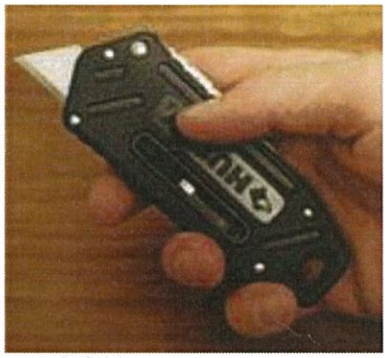
Kershaw Carabiner Keychain With Fold-Out Knife, Sold on Amazon.com

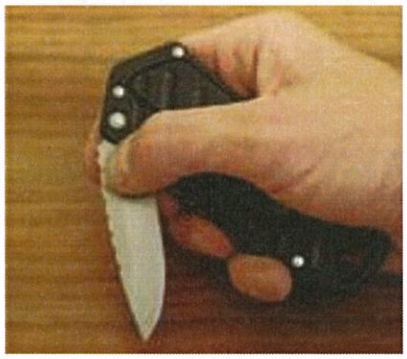
Gerber Folding Knife, Felony Prosecution Latino Defendant

Gerber Folding Knife, Sold at Paragon Sports Manhattan

Husky 2-in-1 Utility Knife, Felony Prosecution, Latino Defendant

Husky 2-in-1 Utility Knife Sold at Home Depot

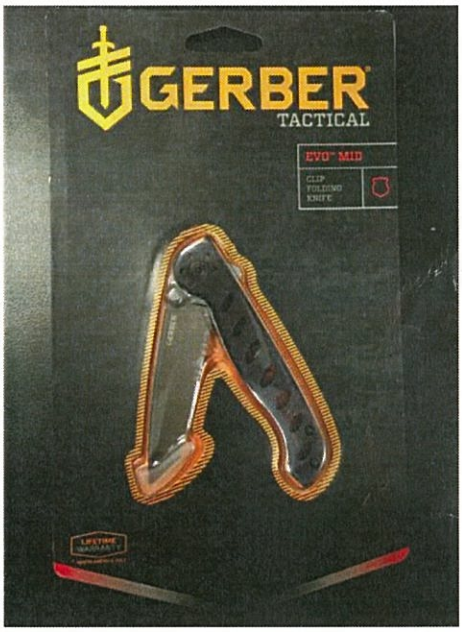




Additional Folding Knives, Treated as Gravity Knives by NYPD, Sold Throughout NYC

Paragon Sports, Manhattan

Sports Authority, Queens



AutoZone, Brooklyn

At the time of the 2010 deferred prosecution agreements DANY carved out an

exemption for Paragon Sports to sell expensive, custom-made knives that violated NYPD's interpretation of the statute on the unfounded rationale that expensive knives were not used to harm people. The ADA responsible for negotiating the deferred prosecution agreements explained the exemption during a deposition in a federal lawsuit brought against DANY:

> Q. At the end of this paragraph 4A there's a statement, "However, this agreement exempts Paragon's sale of custom knives, defined as individual, one of a kind handcrafted knives, separately marketed and sold to collectors."
>
> A. I see that.
>
> Q. And why was this provision included?
>
> A. It was a negotiated provision in order to reach an agreement. Paragon uniquely based on our investigation – or almost uniquely – had an inventory and displayed as merchandise very high end kind of one of a kind knives for – for collectors, real high end stuff. And it was negotiated that the agreement would not – that those knives if they did constitute a prohibited knife would be excluded from the DPA. Both as an incentive to enter into the agreement, but also to reflect that we were just not seeing a thousand, or $2,000 or $5,000 knives being plunged into people's temples and cutting people up. And so that the risk comparatively of those knives was less than other knives.[10]

DANY has not only treated rich and poor possessors of knives differently and failed to enforce the 2010 deferred prosecution agreements, but it aggressively prosecutes black and Latino New Yorkers for possessing folding knives that retailers continue to sell without punishment.

Although most defendants are charged with alleged gravity knife possession face misdemeanor prosecution under P.L. § 265.01(1), DANY exploits P.L. § 265.02(1) to aggressively charge black and Latino New Yorkers with *felony* weapon possession. Under P.L. § 265.02(1) if an alleged possessor of a gravity knife has previously been convicted of any crime, a felony or a misdemeanor, no matter how many years they were previously convicted, possession is deemed a Class D felony, punishable by up to 7 years in prison. P.L. §§ 70.00 (2)(d), (3)(b);

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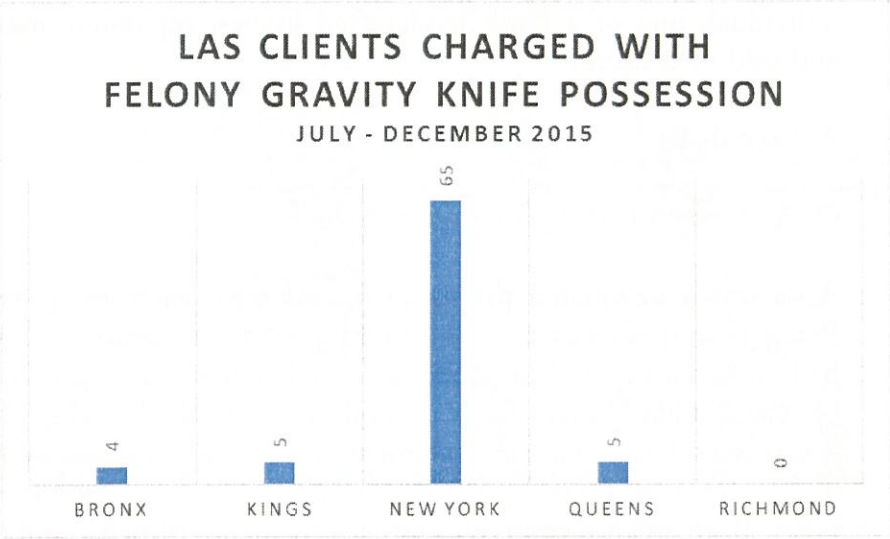
[10] *Copeland et. al. v. Vance*, ADA Dan Martin Rather Deposition, April 27, 2012.

265.02(1). This is the so-called "felony bump-up" rule. Prosecutors have unfettered discretion over whether to file bump-up charges.

According to data compiled by LAS, from July 1, 2015 until December 31, 2015, DANY charged 65 LAS clients with gravity knife possession as a felony. Other prosecutors brought felony prosecutions far less frequently: Bronx (4), Kings (5), Queens (5) and Richmond (0).[11]



Of the 65 defendants prosecuted by DANY for felony gravity knife possession, 90% were black or Hispanic, while only 6% were white. DANY's overzealous felony bump-up policy wreaks havoc on racial minorities by building on decades of discriminatory policing and prosecutorial practices.[12] Because black and Latino New Yorkers are far more likely to have been previously convicted of crimes they are far more vulnerable targets for DANY's aggressive bump-up regime.

<u>State Courts Have Criticized NYPD Practices Yet Rule In Ways That Exacerbate Those Very Practices</u>

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[11] According to citywide arrest data maintained by the Office of the Chief Clerk of New York City Criminal Court, the Legal Aid Society represented the following percentage of defendants in each county of New York City in 2014, the most recent year that the data has been recorded: Bronx (52.50%), Kings (65.33%), New York (65.37%), Queens (58.44%), Richmond (80.50%).

[12] *Floyd v. City of New York*, 959 F.Supp.2d 540 (2013); Besiki Luka Kutateladze and Nancy R. Andiloro, *Prosecution and Racial Justice in New York County, Vera Institute of Justice*, January 31, 2014.

State courts have sharply criticized NYPD and DANY for their discriminatory practices. In 2010, State Supreme Court Judge Ronald Zweibel wrote:

> The Court is troubled by the fact that since 2006, over 1.9 million knives have been sold by retailers like Home Depot for construction work and the retailers face no prosecution but people to whom the knives were sold do. "When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and [penalizes] one and not the other" equal protection has been violated. This is basically what has occurred here. The sellers are not being prosecuted but the buyers, who have no reason to believe that what they are buying for repair work is an illegal gravity knife, are being prosecuted for criminal weapon possession. People going into stores like Home Depot and Lowes should not have to have an attorney accompany them to warn that the tool they are buying is in reality an illegal gravity knife and if they purchase it, they may be criminally liable. This appears to be an absurd result to this Court.[13]

This year State Supreme Court Judge Thomas Farber voiced grave concerns with gravity knife prosecutions:

> I just got through trying to select a jury in a gravity knife case, which is exceedingly difficult.
>
> We had a police officer twenty-nine years on-the-job. When asked does anybody carry a gravity knife, he raised his hand. Then when the DA said, you know, that's illegal, he said what, simple possession, kind of funny.
>
> These laws have got to change with respect to the gravity knives. Everybody who looks at this, every judge who looked at this has the same view.
>
> There is incredibly disparate treatment from county to county, from defendant to defendant, from knife to knife with these kinds of cases, and it gives the prosecuting attorney incredible leeway.[14]

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[13] *People v. Castro*, IND 4820/09, November 24, 2010.

[14] *People v. Robert Willim*, IND 0592/16, May 16, 2016.

New York State's highest court sharply questioned the DANY appellate attorney for DANY's gravity knife prosecution policies in *People v. Gonzalez*, noting that aggressive application of the gravity knife statute to folding knives sold at Home Depot was plainly unjust:[15] https://vimeo.com/176488675 (password: S6483A).

Despite forceful rhetoric, New York Courts have failed to reign in police and prosecutorial abuses.

State courts have construed P.L. §§ 265.01(1) and 265.02(1) to impose strict liability. *People v. Parrilla*, 27 N.Y.3d 400 (2016); *People v. Neal*, 79 A.D3d 523 (1st Dept. 2010). In other words, under New York law, prosecutors must only prove that a defendant knew that he possessed a knife, not that he knew the knife opened with the flick of a wrist. Such rulings are a radical departure from the traditional common law rule that mens rea is required for every crime and that an accused at least know the facts that make his conduct illegal. *Elonis v. U.S.*, 15 S.Ct. 2001, 2015 (2015); *Staples v. U.S.*, 511 U.S. 600 (1994); *Morrissette v. U.S.*, 342 U.S. 246 (1956).

State courts have also rejected vagueness challenges to NYPD's wrist-flick test. *People v. Herbin*, 86 A.D.3d 446 (1st Dept. 2011). The result has been that criminal liability turns on the subjective athletic skill of police officers not the design or intended use of a knife. Even in cases where a police officer was unable to flick a folding knife open consistently, New York State courts have upheld felony convictions. *People v. Parrilla*, 27 N.Y.3d 400 (2016).

These rulings create a nightmare scenario when combined with NYPD's discriminatory enforcement regime. People of color have no reason to believe that the knife they purchase in the "Tool World" section of Lowes is anything other than a tool used for work. But the moment they leave the store and return to a highly policed neighborhood that tool is considered an illegal weapon by NYPD. If a police officer can force it open with the flick of a wrist, the unwitting New Yorker—most often black or Latino—is held strictly liable for that officer's subjective skill.

Conclusion

NYPD's discriminatory enforcement of New York's gravity knife statute is the

[15] Oral Argument, *People v. Gonzalez*, 25 N.Y.3d 1100 (2015).

antithesis of equal justice under the law. Every year NYPD sweeps up thousands people of color for possessing what it treats as tools on store shelves but as weapons once in black and brown hands. NYPD and local prosecutors' systemic failure to end their discriminatory practices howls out for reform.


HUSKY
PRESS

Matthew Jason Miller, MD, MPH, ScD
Professor of Health Sciences and Epidemiology, Northeastern University

Testimony Regarding T2017-6705
October 13, 2017

I would like to thank the Council for the opportunity to provide testimony about the important problem of firearms and the risk of suicide.

I am an expert in injury and violence prevention. I received my MD from the Yale University School of Medicine and my MPH and ScD from the Harvard School of Public Health. I am currently Professor of Health Sciences and Epidemiology at Northeastern University, Adjunct Professor of Epidemiology at the Harvard School of Public Health, and Co-Director of the Harvard Injury Control research Center.

I have researched injury and violence prevention, including gun violence prevention, for almost twenty years. I would like to provide the Council with an overview of the epidemiological and public health research that demonstrates the connection between firearm access and suicide risk.

In 2015, more than 44,000 persons in the United States died by suicide; one half of these persons used firearms (Centers for Disease Control and Prevention). Empirical evidence from ecologic and individual level studies has consistently shown the firearm availability increases the risk of suicide. Firearm suicide rates and overall suicide rates in the United States are higher where gun ownership is more prevalent. By contrast, rates of suicide by methods other than firearms are not significantly correlated with rates of household firearm ownership. This pattern has been reported in ecologic studies that have adjusted for several potential confounders, including measures of psychological distress, alcohol and illicit drug use and abuse, poverty, education, and unemployment (Miller, Azrael, and Barber 2012, Miller, Hemenway, and Azrael 2004, Miller et al. 2007, Miller, Warren, et al. 2013; Siegel 2016)—and even when controlling for data on underlying suicide attempt rates (Miller, Barber, et al. 2013).

Household firearm ownership has also been consistently found to be a strong predictor of suicide risk in studies that examined individual-level data. Every U.S. case control study that has examined the issue has found that the presence of a gun in the home or purchase from a licensed dealer is a strong risk factor for suicide in the U.S. population overall (Cummings et al. 1997, Grassel et al. 2003, Kellermann et al. 1992, Wiebe 2003, Dahlberg, Ikeda, and Kresnow 2004) and separately among adolescents (Brent et al. 1999, Brent et al. 1991, Brent et al. 1988, Brent, Perper, Moritz, Baugher, et al. 1993, Brent et al. 1994), adults, seniors (Conwell et al. 2002), males and females (Kung, Pearson, and Liu 2003, Bailey et al. 1997), and whites and blacks (Kung, Pearson, and Wei 2005). The relative risk is large, varying from two to ten-fold depending on the age group and how firearms are stored in the home (Brent et al. 1991, Conwell et al. 2002, Grossman et al. 2005, Miller and Hemenway 1999, Shenassa et al. 2004). A meta-analysis of individual-level studies (Anglemyer, Horvath, and Rutherford 2014) pooled

data from 12 U.S. and two international studies and reported that household firearm access increased the odds of suicide more than three-fold. Brent's (2001) review of the early literature points out that while the odds of suicide among persons in gun (vs. non-gun) households are increased four- to five-fold after adjusting for psychiatric disorders, the odds are increased further among those without apparent psychopathology (although baseline suicide risk is much lower in this group).

The only large U.S. cohort study to examine the firearm-suicide connection found that suicide rates among California residents who purchased handguns from licensed dealers were over twice as likely to die by suicide as were age/sex matched members of the general population (Wintemute et al. 1999). Here too, the increase in suicide risk was attributable entirely to an excess risk of suicide with a firearm. Risk of suicide was elevated not only immediately after the purchase, but throughout the six year study period, consistent with findings in a case control study by Cummings et al (1997) where the relative risk for suicide given a family handgun purchase was greatest within the first year after purchase but remained elevated throughout the 5 year study period. As in ecologic studies, individual level studies that examined method-specific suicide risk found that the relationship between firearm availability and overall suicide was driven by the relationship between firearm availability and firearm suicide (i.e., decreases observed for suicide by other methods were outstripped by increases in suicide by firearms) (Cummings et al. 1997, Grassel et al. 2003, Wiebe 2003, Wintemute et al. 1999).

Lastly, firearm suicide risk appears to increase as access to a gun in the home is made easier, as when guns are stored loaded and unlocked (Grossman et al. 2005). In the U.S., where roughly one in three homes contains firearms (Azrael et al. 2017), ready availability of firearms contributes substantially to the rate of suicide among Americans.

Unfortunately, reducing access to highly lethal means commonly used in fatal suicidal acts is not generally understood by most Americans to be an effective suicide prevention strategy. For example, 3 in 4 U.S. adults believe that few if any lives would be saved by erecting a wholly effective jumping barrier on the Golden Gate Bridge. Moreover, many clinicians who see suicidal patients regularly in hospital Emergency Rooms subscribe to this actuarial misperception and have a more fatalistic view of suicide than is warranted by the empirical data that exist. Because of this, efforts to educate clinicians need to take place in parallel with efforts to educate the public. To prevent the leading cause of firearm death in the United States, suicide by firearm, such educational efforts are incumbent upon those whose duties include fostering informed decision making in service of saving lives.

I support T2017-6705 because I believe that it would advance these educational efforts and increase awareness of these risks. I hope that my testimony will assist the Council as it considers this legislation.

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Testimony of Susan B. Sorenson

Professor of Social Policy, Professor of Health & Societies, and Director of the Ortner Center on Family Violence, University of Pennsylvania

Submitted to the New York City Council

October 16, 2017

Re: T2017-6705, A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to disclose gun violence information to applicants for firearm licenses and permits

I appreciate the opportunity to present this testimony to you in writing as I am unable to travel today given my teaching responsibilities. I am a public health researcher and teach a course on guns and health. I don't care about guns *per se*, my goal is to increase survival.

Research to date indicates that firearms are a threat to the survival of handgun owners and those who live with them. Multiple studies conducted during the past 25 years document an increased risk of suicide lasting at least six years (the longest follow-up period in the published literature).

In some of my research, I asked an obvious but offensive question – is the increased risk of suicide because gun owners are more psychologically disturbed or distressed than those who don't own guns? The literature to date suggests that the answer to that question is a qualified no: gun owners and non-owners are similar in general emotional health, functional mental health, and help-seeking for mental health problems but they might be more likely to be heavy drinkers, to binge drink and to drink and drive. As a group, these findings suggest that mental health problems are not a driving force behind the increased risk of suicide among gun owners. However, those considering suicide are more likely to make a plan involving a gun if a gun is available. Given the high case-fatality rate, if an attempt is made with a gun, death is likely.

Gun ownership also is associated with an increased risk of becoming both the victim and the perpetrator of a homicide according to some research. It appears to especially be the case if there has been physical violence in the home. Women who have been abused are nearly five more likely to be murdered by an intimate partner if he has access to a gun. Regardless of abuse history, the literature suggests that homicide victimization is a particular risk for women who own guns or who live in a household with someone who does.

T2017-6705 is a limited intervention designed to warn persons applying for a firearm license or permit in New York City of the associated risks of gun ownership. If doing so

increases awareness of risks associated with gun ownership, risks of which most people seem to be unaware, it would be an extremely positive development.

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Testimony of Andy Pelosi, Executive Director, Campaign to Keep Guns Off Campus in Support of T2017-6705 (NYC Firearms Risk Disclosure Bill)

On behalf of the New York-based Campaign to Keep Guns Off Campus (the Campaign), a national nonprofit organization dedicated to addressing the spread of firearms into university and other school environments, my name is Andy Pelosi of Croton Falls, NY. **As current Executive Director of the Campaign** (and former Executive Director of New Yorkers Against Gun Violence – 1999 - 2005), **I submit this testimony in support of T2017-6705, the firearms risk disclosure bill, sponsored by Speaker Mark-Viverito.**

The Campaign's testimony focuses particularly on increased risks to suicides and unintentional injuries that firearms pose to the college-aged population – specifically, those aged between 18 and 24-year olds. It is especially important to shed light on this underappreciated aspect of the risks of firearms, considering: (a) the movement nationwide attempting to legalize the carry of firearms on college campuses, and (b) the large population of college-aged students living in New York City, numbering around 800,660 people.[1]

The increased risk that firearms pose to suicides and unintentional injuries – and specifically among the college-aged population in the United States – does not get enough attention, compared to the attention paid to the risks that firearms pose to crime. However, it is a fact that suicides and unintentional injuries are comparatively likelier to happen among this population, at least on college campuses. For example, one study, surveying 157 4-year colleges, found reported rates of 10.80 deaths by unintentional injuries, 6.17 deaths by suicides for every 100,000 college students between 18 and 24 years old.[2] The same study found rates, by comparison, of .53 deaths by homicides for every 100,000 in this population.[3]

It is also fact that firearms substantially increase the risk of suicides and unintentional injuries among this population. Health researchers have consistently concluded: not having firearms available on campus is the single biggest factor in explaining why more suicides do not occur among **on-campus students**, as compared to all college-aged youth. One study found that, among a national sample, the suicide rate was 7.0 among every 100,000 students, yet 12.1 among every 100,000 of the total college-aged population – ultimately stating that "[i]t is difficult to escape the conclusion that it is the diminished use of firearms as a method of suicide that is principally responsible" for the lower rates on campus.[4]

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[1] See JOBSFIRSTNYC & COMMUNITY SERVICE SOCIETY, DECLINES IN NEW YORK CITY'S OUT-OF-SCHOOL, OUT-OF-WORK YOUNG ADULT POPULATION . . . BUT NUMBERS REMAIN HIGH 14 (2017) (reporting in 2015 that 53 percent of the 18-24 year population in New York City are enrolled in school, numbering at 424,350).

[2] See James C. Turner et al., Causes of Mortality among American College Students: A Pilot Study, 27 J. COLL. STUDENT PSYCHOTHERAPY 31 (2013).

[3] See id.

[4] See, e.g., Allan J. Schwartz, Rate, Relative Risk, and Method of Suicide by Students at 4-Year Colleges and Universities in the United States, 2004-2005 though 2008-2009, 41 SUICIDE & LIFE-THREATENING BEHAV. 353, 359 (2011).

That firearms substantially increase the risk of suicides might – in concert with these statistics – be additionally inferred from the fact that suicide by firearm is much more common among the general college-aged population, as compared to the actual college student population. In a recent survey, the National Center for College Counseling Directors found that 27 percent of college students who commit suicide do so by firearms,[5] while 45 percent of all 18 to 24-year olds committing suicide do so by firearms – a substantially higher number.[6]

Even among campuses, there is evidence of a greater risk of firearms by suicide where campuses allow firearms, versus campuses that do not. A recent survey of the directors of college counseling centers across the United States found that, among campuses allowing concealed carry, 42.9 percent reported suicides by firearms – as compared to, among campuses prohibiting concealed carry, 13.3 percent reporting suicides by firearms.[7] The Campaign has documented many of these suicides on campuses that allow firearms carry.[8]

Firearms also substantially increase the unintentional injuries risk among the college-aged population. Similar evidence bears this out: while, as earlier stated, one study reported a rate of 10.80 deaths by unintentional injuries among college students aged 18-24 years, the CDC between 2000 and 2014 reported a rate of 38.37 deaths by unintentional injuries among the general 18-24 year-old population.[9] Again, this can reasonably be attributed to the fact that firearms are less available on campus, because of traditionally strict prohibitions, than among the general population. The Campaign to Keep Guns Off Campus has also documented the number of unintentional injuries that have taken place on campuses that allow firearms carry.[10]

Considering additionally that many students going to college in New York City live off campus – and thus away from campus firearm bans – it is important to appreciate how firearms pose substantially increased risks to suicides and unintentional injuries among the college-aged population. These risks are, unfortunately, undervalued, while the benefits of firearms in college settings have been oversold. Statistics such as these undergird rejection by American higher education at large of campus carry: for example, after the Virginia Tech shooting, the bipartisan Virginia Tech Review Panel concluded that having more guns on campus poses a risk of leading to a greater number of accidental and intentional shootings than it does in averting some of the relatively rare homicides."[11]

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[5] See ROBERT P. GALLAGHER, NATIONAL SURVEY OF COLLEGE COUNSELING CENTERS (2014).

[6] See CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, WEB-BASED INJURY STATISTICS QUERY AND REPORTING SYSTEM (WISQARS) (2005), *available at* http://www.cdc.gov/injury/wisqars.

[7] Marjorie D. Sanfilippo & O. Weed, Concealed Carry on College Campuses: Surveys of Students, Counseling Center Directors, and Campus Safety Officers (2017) (accepted to the 2017 Convention of the Association for Psychological Science, Boston, MA).

[8] CAMPAIGN TO KEEP GUNS OFF CAMPUS, INCIDENTS IN STATES THAT ALLOW CAMPUS CARRY (OCT. 11 2017), *available at* http://keepgunsoffcampus.org/blog/2017/10/11/incidents-states-allow-campus-carry.

[9] CENTERS FOR DISEASE CONTROL, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, NCHS VITAL STATISTICS SYSTEM (2017), *available at* https://www.cdc.gov/nchs/nvss/index.htm.

[10] See supra note 8.

[11] VIRGINIA TECH REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH: APRIL 16, 2007 (2007).

For these reasons, the Campaign to Keep Guns Off Campus urges this Council to adopt T2017-6705.

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Community Service Society | Fighting Poverty Strengthening New York

Testimony by

Nancy Rankin, VP for Policy Research and Advocacy
Community Service Society of New York

Before the New York City Council Committee on Public Safety

October 16, 2017

Thank you for the opportunity to testify today in support of Int. 1164 which would require the police department to regularly report data on arrests and summonses for subway fare evasion.

My name is Nancy Rankin. I am Vice President for Policy Research and Advocacy for the Community Service Society of New York (CSS), a nonprofit organization that works to advance upward mobility for low-income New Yorkers.

In New York City, one of the things essential for economic mobility is access to public transit. As MTA fares have risen, one in four poor New Yorkers struggle to afford the buses and subways they must rely on to get to work, seek employment or training, care for their children or simply get around the city. To address this problem we launched a campaign calling for half-price fares for New Yorkers living below poverty that has drawn widespread public, editorial and political support, including from 40 of the 51 members of this City Council.

As we drew attention to this issue, many New Yorkers, and our public defenders pointed to even more serious consequences of prohibitively high transit costs: unaffordable fares combined with aggressive farebeating enforcement, a hallmark of broken windows policing, was annually dragging more than 26,000 people, most of them poor and most of them black or Latino, through the criminal justice system. Arrests can have lifelong consequences, including a criminal record that limits employment, housing, and higher education opportunities, and could put an immigrant at risk of deportation.

These concerns prompted CSS researchers to examine 2016 fare evasion arrest data from the two public defender organizations operating in Brooklyn—The Legal Aid Society and Brooklyn Defender Services—to shed light on how fare evasion policing was affecting our communities. The Brooklyn data paint a stark picture of racial inequality. Individuals arrested were

overwhelmingly people of color: young black men (ages 16-36) represent half of all fare evasion arrests, but are only 13.1% of poor adults living in Brooklyn.

Our full report, *"The Crime of Being Short $2.75: Policing Communities of Color at the Turnstile,* was released today. Authors Harold Stolper and Jeff Jones found that arrests for fare evasion overwhelmingly involve young black men, and are highly concentrated at subway stations located in high-poverty black neighborhoods. While local area poverty levels and criminal complaints are related to fare evasion arrests, neither fully explain this racial disparity.

Subway stations with the highest rate of fare evasion arrests per 100,000 MetroCard swipes were all located in predominantly black neighborhoods near the border of Brownsville and East New York (Junius St. 3, Atlantic Av L, Sutter Av L, and Livonia Av L stations). Fare evasion arrest rates at these stations were between 7 and 35 times higher than rates at stations located in areas with comparable numbers of Hispanic poor residents (around stations in Sunset Park). Similarly, fare evasion arrest rates at stations located in Brownsville and East New York are considerably higher than at other Brooklyn subway stations with similar or even higher numbers of nearby criminal complaints located in areas that are not predominantly black. This suggests that the high rate of farebeating arrests is not merely incidental to the deployment of police to high crime areas.

These troubling findings underline the need to have publicly available data on fare evasion arrests and civil summonses, on a timely, regular basis. The bill introduced by City Council Member Rory Lancman would do just that. It would require the NYPD to release quarterly reports on both the number of arrests for fare evasion, the number of civil summonses issued, and the demographic and location information for those arrests. Having access to data on the number of fare evasion arrests and civil summonses broken down by race and ethnicity, gender and age for each MTA subway station, would allow us to see whether the patterns we observed in Brooklyn are playing out across the city. For the first time we would also have data to ascertain whether less harsh civil summonses that carry a $100 fine follow a different or similar pattern. Moreover, trend data would enable us to assess the impact of announced changes in the prosecution of fare evasion arrests by Manhattan District Attorney, Cyrus Vance, as well as much needed reforms in policing practices.

The city's current approach to fare evasion by New Yorkers who lack $2.75 to cover the subway fare amounts to de facto criminalization of poverty. This is not unique to New York City. Cities like San Francisco, Minneapolis and Seattle are beginning to grapple with the fact that public transportation is being policed in a way that has a disproportionately adverse impact on poor communities of color. Instead of punitive policies that harm our most vulnerable members, and saddle young black and Latino men with criminal records, we should work to make public transit more affordable for all, including those living at or below poverty.

Thank you.

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WRITTEN TESTIMONY OF
REBECCA FISCHER, EXECUTIVE DIRECTOR
NEW YORKERS AGAINST GUN VIOLENCE

NEW YORK CITY COUNCIL
COMMITTEE ON PUBLIC SAFETY

October 16, 2017

Bill Summary (File No. T2017-6705): Amending the Administrative Code of the City of New York, this local legislation would require the police department to disclose gun violence information to applicants for firearm licenses and permits.

My name is Rebecca Fischer and I am the Executive Director of New Yorkers Against Gun Violence. For over twenty years, New Yorkers Against Gun Violence has been advocating at the local, state, and national levels for laws, policies, and practices that protect New York State residents, particularly, youth from gun violence. I submit this written testimony to the New York City Council's Committee on Public Safety in support of the pending gun-risk warning bill. The bill would require the New York Police Department to warn applicants for firearm licenses and permits about the risk of injury and death associated with possessing a gun. We applaud Speaker Melissa Mark-Viverito and Council Member Vanessa Gibson for sponsoring this bill and urge the New York City Council to pass this critical gun safety legislation.

Gun violence is a public health epidemic that is killing over 32,000 Americans per year and injuring thousands more.[i] The daily carnage is unacceptable and preventable and more must be done by our lawmakers to save lives here in New York and across the country. We need to adopt effective practices and policies that have been used to address other public health problems. Research, marketing campaigns, and product warnings and labels have changed public opinion and practices with respect to other products, from motor vehicles to cigarettes.

Between 1966 and 2010, the prevalence of cigarette smoking among American adults was reduced by more than half (43% to 19%) through taxation, public education, and product regulation.[ii] Notably, product warnings and physician counseling specifically led to greater awareness of smoking-related health risks.[iii]

Similarly, warnings and public education about the deadly risks of owning and possessing a firearm would help reduce gun death and injury rates here in New York and around the nation. Despite the strong, data-supported correlation between gun ownership and fatality, many Americans choose to own guns for "protection and self-defense".[iv] There is a deadly misperception that guns make us safer even though reliable research proves otherwise. The pending warning legislation would help counter the "self-defense" myth and ensure that firearm applicants in New York City are notified of the serious risks associated with owning a gun, including suicide-by-firearm, domestic violence, and unintentional injury and death.

A warning that could potentially deter an applicant who is in crisis from purchasing a gun would help prevent and reduce suicide-by-firearm tragedies. Suicide rates have been increasing in New York State and nationwide over the past decade. Since 2000, the number of suicides has increased by 32% in New York State and only four other states have had more suicides.[v] To address this public health problem, we must take steps to protect at-risk individuals as the presence of a gun in the home has been shown to have devastating consequences. In fact, studies consistently show that possessing a gun dramatically increases the probability of suicide. 87% of suicide attempts with a gun end in fatality as compared to only 3% of suicide attempts by other common means, such as medication overdose.[vi] Moreover, although there is a misperception that individuals who are determined to commit suicide will end their lives whether they have access to a gun or not, most people who attempt suicide only attempt once.[vii] Given that the presence of a firearm significantly increases the likelihood that the first attempt will lead to fatality, a warning law disclosing this risk is critical.

A gun-risk warning law would also help reduce and prevent incidents of domestic violence. Family and intimate assaults with firearms are twelve times more likely to result in death than non-firearm assaults.[viii] While two-thirds of women who own guns purchase them "primarily for protection against crime," acquiring the gun actually substantially increases the likelihood that the female gun owner will die.[ix] In fact, a study of risk factors for violent death of women in the home found that women living with one or more guns were three times more likely

to be killed in their homes.[x] From 2003 to 2012, more than 34% of female domestic violence homicide victims in New York State were killed with a gun.[xi]

Firearm applicants should also be alerted that the presence of a gun in the home significantly increases the likelihood of a fatal unintentional shooting and puts the lives of children at risk. Gun violence is the second leading cause of death of children ages 0 through 19 in America and a significant percentage of those deaths are unintentional shootings.[xii] In 2015, 2,824 youth under the age of 19 were killed by guns and 1,100 were either youth suicides or "accidents".[xiii] Although unintentional shootings of children are seriously under-reported, New York State-specific data has indicated that each year over 200 youth are treated in a hospital because of unintentional firearm injury.[xiv] Given the statistics, a warning is needed to inform and notify parents, family, and household members that guns are more likely to cause senseless accidents and youth suicide, than to safeguard the lives of our children.

For all the aforementioned reasons, New Yorkers Against Gun Violence supports the passage of the pending gun-risk warning bill. Passage of this bill is in the best interest and safety of our children, our communities here in New York City, and all New Yorkers.

Respectfully,

Rebecca G. Fischer
Executive Director
New Yorkers Against Gun Violence

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[vi] The Law Center to Prevent Gun Violence, "Confronting the Inevitability Myth: How Data-Driven Gun Policies Save Lives from Suicide," (September 2017); citing Kim So—en, "To Reduce Suicide, Look at Guns," Washington Post, July 13, 2016, https://www.washingtonpost.com/graphics/business/wonkblog/suicide-rates.
[vii] Id.
[viii] Violence Policy Center, "When Men Murder Women," (2015); citing Douglas Wiebe, "Homicide and Suicide Risks Associated with Firearms in the Home: A National Case-Control Study," Annals of Emergency Medicine 41, no. 6 (2003): 77
[ix] Id.
[x] Id at 1.

[xi] Center for American Progress, https://cdn.americanprogress.org/wp-content/uploads/2014/10/CAP-DV-NY-10.14.pdf; citing Federal Bureau of Investigations, Supplemental Homicide Data (U.S. Department of Justice, 2003-2012).
[xii] The Law Center to Prevent Gun Violence, "Child Access Prevention," http://smartgunlaws.org/gun-laws/policy-areas/child-consumer-safety/child-access-prevention/.
[xiii] Id.
[xiv] New York State Department of Health, https://www.health.ny.gov/prevention/injury_prevention/children/fact_sheets/birth-19_years/firearm_injuries_birth-19_years.htm.

GIFFORDS LAW CENTER
TO PREVENT GUN VIOLENCE

268 Bush Street #555, San Francisco, CA 94104 415-433-2062 GIFFORDSLAWCENTER.ORG

Testimony of Adam Skaggs
Chief Counsel, Giffords Law Center to Prevent Gun Violence

Regarding Ordinance T2017 – 6705,
A Local Law to amend the administrative code of the City of New York, in relation to requiring the police department to disclose gun violence information to applicants for firearm licenses and permits

Submitted to the New York City Council

October 18, 2017

Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") appreciates the opportunity to submit testimony on proposed ordinance T2017 – 6705 (the "Ordinance"), and on behalf of Giffords Law Center, I urge the Council to pass this important legislation. By requiring that prospective gun buyers are informed about the risks associated with owning a firearm, this ordinance will promote public safety and save lives.

My name is Adam Skaggs and I am Chief Counsel at Giffords Law Center, which was founded by lawyers after an assault weapon massacre at a San Francisco law firm in 1993. For the last twenty-four years, we have studied the causes and costs of gun violence, and shared our expertise with federal, state, and local legislators nationwide to promote efforts to prevent gun violence. We are familiar with a wealth of scholarship that has demonstrated, time and again, that the presence of a gun in the home is associated with significant risks, especially risks relating to suicide, unintentional shootings, and intimate partner homicide. Yet polling data also indicate that the public significantly underestimates the scale of these risks—in part because the firearms industry ignores these hazards and disseminates misinformation, obfuscating the real dangers of gun ownership and making it difficult for consumers to make informed decisions.

The Ordinance would address these problems and ensure that consumers wishing to buy guns have the data they need to make informed choices about gun ownership. The Ordinance would require the New York Police Department ("NYPD") to provide City residents seeking firearm licenses or permits with a written warning informing them of the risks they assume by keeping a gun in the home. We urge the Council to pass this important public safety measure and, for the reasons outlined below, we urge that it be strengthened further with the addition of a signed acknowlegment provision.

The ordinance would enhance understanding of the increased risk of suicide associated with gun ownership. Most people who act on suicidal ideation do so impulsively, often in response to a recent stressor or life event, making easy immediate access to firearms the difference between life and death. The increased risk of a successful suicide when a gun is present in the home is borne out in numerous studies. In fact, every U.S. case-control study that has examined this issue has shown that the risk of a completed suicide is two to five times higher for every person in a gun-owing household.[1] For men—the group most likely to attempt suicide with a firearm—the likelihood of dying as a result of suicide increases tenfold.[2] While the overwhelming number of people who survive a suicide attempt do not try to commit suicide a second time,[3] because the risk of a successful suicide is so much higher with a firearm than with other means, very few people who attempt suicide with a gun are afforded this second chance.[4]

The ordinance would increase understanding of the elevated risk of unintentional death or injury associated with gun ownership. Whether as a result of improperly stored firearms, negligence, or a tragic accident, unintentional shootings—particularly among children—are significantly more likely when a gun is present in the home. According to one 2006 study, firearms are the greatest threat a child is likely to encounter in their home.[5] Nearly 90

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[2] Linda L. Dahlberg, et al., "Guns in the Home and Risk of a Violent Death in the Home: Findings from a National Study," 160 Am. J. Epidemiology 929, 930 (2004).

[3] Harvard T.H. Chan School of Public Health, Means Matter, Attempters' Longterm Survival, at http://www.hsph.harvard.edu/means-matter/means-matter/survival/ (citing Owens D, Horrocks J, and House A. Fatal and non-fatal repetition of self-harm: systematic review. British Journal of Psychiatry. 2002;181:193-199).

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percent of accidental shooting deaths involving a child take place at home.[6] But the risk is not limited to children: Adults who reside in a household with guns are 3.7 times more likely to die of an accidental gunshot wound.[7]

The Ordinance would increase understanding of the fact that intimate partner homicides are far more likely in households where a gun is present. If a gun is present in a domestic violence situation, the risk of death for a female victim of intimate-partner violence increases by a factor of five.[8] Overall, "a gun in the home was associated with a nearly threefold increase in the odds that someone"—of any gender—"would be killed at home by a family member or intimate acquaintance."[9]

* * *

While the Ordinance, as drafted, would make important strides toward accomplishing the goal of ensuring potential gun buyers know the risks their contemplated purchase would entail, we believe it could be strengthened substantially by including an acknowledgement requirement. In particular, we believe the Ordinance would more effectively accomplish its goals if it mandated—or authorized the Police Commissioner of the City of New York (the "Commissioner") to promulgate a rule requiring—that propsective gun buyers sign an acknowledgment form attesting to having received the disclosures contemplated by the existing draft Ordinance.

If a signed acknowledgment form were mandated by the Ordinance (or required by a rule promulgated by the Commissioner), it would focus the attention of a license or permit applicant on the information disclosed. This, in turn, would

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[6] Guohua Li et al., Factors Associated with the Intent of Firearm-Related Injuries in Pediatric Trauma Patients, 150 ARCHIVES OF PEDIATRIC & ADOLESCENT MED. 1160, 1162 (1996).

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create incentives for would-be gun owners to further inform themselves about all the potential risks associated with gun ownership and the responsible practices for gun storage and use that may ameliorate them. This would further the goals underlying the Ordinance, and would reduce the risks of gun injury in the City.

The City would also be the first jurisdiction to contemplate such a signed acknowledgment of the risks involved with gun ownership, and a first-in-the-nation policy adopted in New York would become a model that other jurisdictions could emulate.

The City has the legal authority to address acknowledgment in the Ordinance. New York is a home rule state, and the City enjoys broad powers where the legislature has not preempted it from acting. The State has not expressly preempted requiring a signed acknowledgment in the context of license and permit applications, and the only court to address whether implied field preemption limited the City's ability to regulate gun licensing concluded that it did not.[10] The court found, instead, that New York City could act to regulate alongside state law so long as it only supplemented, and did not supplant, the state's licensing requirements.[11] Mandating an acknowledgment form or authorizing the Commissioner to issue a rule regarding an acknowledgment would be consistent with this authority.

Indeed, a very similar signed acknowledgment from permit or license applicants is already required. 38 RCNY § 5-33 requires applicants to acknowledge that they are aware of and will comply with federal, state, and local laws. The Ordinance should invoke this same authority with respect to a similar acknowledgment that the risks of firearm ownership addressed in the Ordinance have been disclosed to the applicant.

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[10] *See de Illy v. Kelly*, 775 N.Y.S.2d 256, 256 (N.Y.A.D. 1 Dept. 2004) (rejecting argument that the New York State statute pertaining to license and permit applicants "preempted any and all local regulation in this field."). True, in *Chwick v. Mulvey*, 915 N.Y.S.2d 578 (N.Y.A.D. 2 Dept. 2010) one department of the Appellate Division found that a Nassau County ordinance was preempted by state law. But State law gives New York City broader leeway to regulate licensing than it gives Nassau and other counties outside the City, and indeed, the City already requires a signed acknowledgment, in the context of 38 RCNY § 5-33.

[11] *Illy*, 775 N.Y.S.2d at 257.

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Submitted to the New York City Council

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[11] *Illy*, 775 N.Y.S.2d at 257.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. T2017-6705 Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: MARIEL GOETZ

Address: _____

I represent: BRADY CENTER & CAMPAIGN TO PREVENT GUN VIOLENCE

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1569 Res. No. _____

☒ in favor ☐ in opposition

Date: 10/16/17

(PLEASE PRINT)

Name: Tomoki Komoto

Address: _____

I represent: Self

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1636+1712 Res. No. _____

☒ in favor ☐ in opposition

Date: 10/16/17

(PLEASE PRINT)

Name: Kate Wagner-Goldstein

Address: ~~Lega~~ 225 Varick Street, NY NY 10014

I represent: Legal Action Center

Address: 225 Varick St.

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. 1636 6331 Res. No. _____

☒ in favor ☐ in opposition

Date: 10/16/17

(PLEASE PRINT)

Name: Estee Konor

Address: 633 Third Ave 10th Fl, NY, NY 10017

I represent: Community Service Society of NY

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1636 Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Kate Rubin

Address: 727 E. 10th St Brooklyn, Ny 11230

I represent: Youth Represent

Address: 11 Park Place, NY NY

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1636 1638 Res. No. _____

☒ in favor ☐ in opposition

Date: 10/16/2017

Christine Bella +

(PLEASE PRINT)

Name: Marlen S. Bobden The Legal Aid Society

Address: 199 Water Street, NYC, NY 10038

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. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/16/2017

(PLEASE PRINT)

Name: Jared Chausow

Address: _____

I represent: Brooklyn Defender Services

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1636 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Kelly Grace Price

Address: 534 W 187

I represent: Jails Action Coalition

Address: 40 Rector St.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1636, 1664, T2017 1569 Res. No. 1660

☒ in favor ☐ in opposition

Date: 10-16-2017

(PLEASE PRINT)

Name: Wesley Caines

Address: 937 Wheeler Ave Bx NY 10473

I represent: The Bronx Defenders

Address: 360 161st St. Bx NY 10451

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. 1664 + 1712 Res. No. _____

☒ in favor ☐ in opposition

Date: 10-16-17

(PLEASE PRINT)

Name: Judy Whiting

Address: c/o CSS, 633 3rd Ave 10th Fl. NYC 10017

I represent: Community Service Society

Address: — as above —

THE COUNCIL
THE CITY OF NEW YORK

Gravity
KINGS

Appearance Card

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

☐ in favor ☐ in opposition

Date: 10/16/17

(PLEASE PRINT)

Name: Martin Lafalce

Address: _____

I represent: The Legal Aid Society

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Gravity
KINGS

Appearance Card

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

☐ in favor ☐ in opposition

Date: 10/16/17

(PLEASE PRINT)

Name: Hara Robrish

Address: _____

I represent: The Legal Aid 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. 1660

☒ in favor ☐ in opposition

Date: 10/16/2017

(PLEASE PRINT)

Name: Assemblymember Dan Quart

Address: _____

I represent: 73rd AD

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: 10/16/17

(PLEASE PRINT)

Name: Director Jonathan David, NYPD Licensing Division

Address: _____

I represent: NYPD

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: 10/16/17

(PLEASE PRINT)

Name: Alex Crohn

Address: 1 Centre Street

I represent: Mayor's Office of Criminal Justice

Address: General Counsel

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: Nicole Torres

Address: 1 Centre Street

I represent: Mayor's Office of Criminal Justice

Address: Deputy Chief of Public Affairs

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. 1664 Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Assistant Chief Vincent Cogar, NYPD Transit Bureau

Address: _____

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. 1611 Res. No. _____

☐ in favor ☐ in opposition

Date: 10/16/17

(PLEASE PRINT)

Name: Chief of Detectives Robert Boyce

Address: _____

I represent: NYPD

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: 10/16/17

(PLEASE PRINT)

Name: Oleg Chernyavsky, Director of Legislative Affairs

Address: _____

I represent: NYPD

Address: _____

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