

CITY COUNCIL
CITY OF NEW YORK

----- X

TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CIVIL RIGHTS

----- X

December 3, 2014
Start: 10:09 a.m.
Recess: 2:14 p.m.

HELD AT: Committee Room - City Hall

B E F O R E: Darlene Mealy
Chairperson

COUNCIL MEMBERS:

Mathieu Eugene
Daniel Dromm
Deborah L. Rose
Andy L. King
Ritchie J. Torres

A P P E A R A N C E S (CONTINUED)

Maya Wiley
Counsel to the Mayor

Brian Goldberg
DCAS

Brittany Saunders
Deputy Counsel to the Mayor

Gale Brewer
Manhattan Borough President

Paul Keefe
Commission Service Society

Amy Hong
The Employment Law Unit at Legal Aid Society
Civil Practice

Robert Newman
Legal Aid Society

Jackson Rockingster
President of Habnet Chamber of Commerce

Angel Gairrido
Director of Programs and Public Relations at
Inner City Tech

Tsedeye Gebreselassie
National Employment Law Project

Wayne Speed

A P P E A R A N C E S (CONTINUED)

Marilyn Scales

Richard Norat

Kathryn Wylde
Partnership for NYC

Darren Ferguson
Pastor at Mount Carmel Baptist Church

Heather Garretson
Researchers of Re-entry

Fernando Vega
New York Harm Reduction Educators

Tani Mills
Center for Employment Opportunities

Robin Richardson
Sex Workers Project at Urban Justice Center

Carl Stubbs
Vocal New York

Viamay Richardson-White
32 BJ SEIU

Susan Samuel
It Takes a Community to Raise a Child

Molly Kovel
Bronx Defenders Civil Action Practice

A P P E A R A N C E S (CONTINUED)

Sebastian Solomon
Legal Action Center

Annie Garneva
New Yorkers City Employment and Training
Coalition

Janelle Corles
New York Working Families

Nono C. Pearson
United Vision Marketing Firm

Dwayne Andrews
Cozen O'Connor Law Firm on behalf of
AlliedBarton Security Services

Johnathan Jimenez
Icahn Medical School of Medicine at Mount Sinai

Sarah Alba
Manhattan Legal Services

Barry Cambell
Fortune Society

Welsey Canes
Brooklyn Defender Services

Kimberly Howard

Alexander Gomez

1
2 CHAIRPERSON MEALY: Good morning. The
3 Committee on Civil Rights is about to start.

4 [gavel]

5 CHAIRPERSON MEALY: Good morning. I'm
6 Councilwoman Darlene Mealy, I'm the Chair of the New
7 York City Council Committee on Civil Rights. I'd
8 like to introduce the other members of the council
9 who have joined us thus far, Council Member Johnson,
10 Council Member Dromm, Council Member King, Council
11 Member Williams, Council Member Torres, and thank you
12 Johnson, and I have Ms. Alike Brown--Alisha [sp?]
13 Brown. This is our new Counsel to the Committee. I
14 hope all my colleagues welcome her.

15 [applause]

16 CHAIRPERSON MEALY: And our other
17 Counsel, Jennifer Motava [sp?]. Today, the Committee
18 on Civil Rights will hold a hearing on a bill that
19 addresses a very important issue and has a potential
20 to create a safer New York City by licensing,
21 encouraging, and employment of members of our
22 community who have criminal records. The
23 discrimination that some members of our community
24 face while looking for jobs after they have been
25 arrested or imprisoned does not only hurt them, but

1
2 it also hurts the families and New York City as a
3 whole. Making sure everyone has a fair chance at
4 employment and economic growth is in deed a great
5 concern and benefit for all New Yorkers. Intro
6 Number 318 sponsored by my colleague, Council Member
7 Williams, seeks to address the issues of criminal
8 background checks and the hiring process of ex-
9 offenders. The bill would also limit the situations
10 where an employer can ask about or consider a job
11 applicant's criminal background. Studies suggest
12 that when an ex-offender has gainful employment, that
13 offender is less likely to commit another crime. The
14 goal of the bill is to improve reintegration into the
15 community, reduce crime and create a more--reduce
16 crime and create a more fair situation for those who
17 have been arrested or served their time. Today, the
18 committee will hear testimony regarding this bill
19 from the Administration, community organizations and
20 other affected individuals. I thank all of you for
21 providing testimony. That is important to
22 understanding the impact of this bill. Please be
23 aware that we have large number of individuals
24 providing testimony today, and we may have to
25 eventually limit the time for each person to give

1
2 their testimony, but please keep in mind that your
3 written testimony will be submitted for the record in
4 full. I also like to ask that my colleagues who wish
5 to ask questions respect the time of those who have
6 come to testify today. Now, I'd like to give Council
7 Member Williams, who sponsored this Intro Number 318,
8 the opportunity to speak.

9 COUNCIL MEMBER WILLIAMS: Thank you.

10 Good morning. My name is Council Member Jumaane
11 Williams. First, I want to thank Chairperson Mealy
12 for having this hearing. Thank you all for coming
13 out to testify, and thank my cosponsors, Manhattan
14 Borough President Gale Brewer, Council Member Johnson
15 and Torres for cosponsoring the bill with me, and
16 thank you again for those who come who are planning
17 to testify shortly. In a society which fuels mass
18 incarceration with little efforts of rehabilitation,
19 the one thing that has been shown to reduce
20 recidivism is the one thing that too many find hard
21 to obtain, a job. Having a past conviction should
22 not prevent someone from being able to put food on
23 the table or pay your rent. Intro 318 ensures that
24 all New Yorkers, including those who have been
25 stigmatized and discriminated against because of

1 previous convictions will have an equal opportunity
2 to compete for jobs for which they qualify. I've had
3 the privilege of meeting with many in the industry,
4 business owners, other special interest groups,
5 various chambers of commerce and advocates to hear
6 their thoughts. I look forward to hearing many of
7 them today, but first I'd like to point out this
8 legislation will not hurt employers, as it does not
9 require them to hire any particular applicant. It
10 does not require them to hire an applicant who has
11 previous conviction. All it does is provide and
12 opportunity for a fair chance for people--

14 CHAIRPERSON MEALY: [interposing] Excuse
15 me. Could we wait. That is--this important hearing,
16 because I couldn't even hear what you were saying.

17 COUNCIL MEMBER WILLIAMS: It does--should
18 I keep going? It does--

19 CHAIRPERSON MEALY: No, no.

20 COUNCIL MEMBER WILLIAMS: Yeah, they
21 trying to stop progress, but--

22 CHAIRPERSON MEALY: Is that it? I want to
23 hear it. This is important. So, and that is getting
24 louder and louder.

1
2 COUNCIL MEMBER WILLIAMS: Yeah. I'll keep
3 going, hopefully they'll be able to figure it out.
4 But as I was saying, it does--what it does is makes
5 sure that people have a fair chance when they're
6 applying for a job to make sure that they're viewed
7 as a whole person and not just their past mistake.
8 The law says employers cannot deny jobs simply
9 because a person has a criminal record, but what we
10 found is that is exactly what was happening,
11 particularly because when the question was asked. The
12 law does not prevent an employer from asking about a
13 criminal history. It changes the time frame in which
14 they can ask. Employers who are legally prohibited
15 from hiring people with certain convictions will
16 still be able to do so. Employers may still decline
17 to hire someone whose conviction poses a direct
18 relationship or unreasonable risk. Additionally,
19 under the Second Chance Provision, employers cannot
20 consider misdemeanors more than five years old, and
21 felonies more than 10 years old, running from date of
22 sentence or release from incarceration, whichever is
23 later. So that 10 years can actually be in effect
24 longer than that. Again, the "look back period" does
25 not apply to laws that already exist in special

1 cases. Usually people jump to the case of sexual
2 abuse and working with children. Those kind laws
3 already covered, and a look back period would not
4 cover that either. To clarify, the Second Chance
5 Provision only applies to employers who are not
6 required by law to conduct background checks also
7 with jobs like security. It is a time we are--by the
8 way the law already exists in Article 23A, in which
9 time is actually one of the factors that you must use
10 when considering whether the job is connected or not.
11 It is time New York City joins the ranks of more than
12 80 cities and 13 states, most recently, New Jersey.
13 If New Jersey could do it, we could do it--to ban the
14 box and give all applicants a fair chance at
15 employment. Our city government has already
16 prohibited agencies and human service contractors
17 from asking whether a job applicant has ever been
18 convicted of a crime, and we found just that move has
19 allowed many people in the WEP program to get jobs
20 where they were having difficulty doing it before.
21 It is important to know that recidivism rates
22 decreased dramatically with post-incarceration
23 employment. I'm happy to report that many employers
24 have also announced their support for the Fair Chance
25

1 Act, in particular, the Doe Fund, the Crewman [sic],
2 the American Chamber of Commerce, the Haitian
3 American Business Network and many others. They
4 joined large companies like Target which already
5 voluntarily stopped asking for criminal history
6 information on its job application. Most recently,
7 Attorney General Eric Schneiderman required Party
8 City and Bed Bath & Beyond to also remove the
9 question from their employment applications. This
10 legislation empowers employers to making sure that
11 they are able to consider all qualified applicants
12 rather than overlooking any one person. I'm a strong
13 believer in removing barriers to success for those
14 who are qualified to work, because not only does
15 employment lower recidivism, but banning the box
16 gives employers a broader range of candidates to
17 consider. It's time we tear down this barrier from
18 those seeking to get their lives back on track and
19 give every individual a fair chance at employment
20 when passed. This bill won't end all forms of
21 discrimination against formerly incarcerated people.
22 It won't fix the broken criminal justice system, but
23 it is the first, one of the first steps to end the
24 stigma which many carry their entire lives. Again,
25

1
2 I'd like to thank co-primes, Council Member Corey
3 Johnson, Torres and the Borough President Gale Brewer
4 and the Chair for allowing us to have this hearing
5 and many of the essential staff that work with us,
6 many of the advocates including Vocal New York,
7 Community Service Society, Faith in New York, for
8 HOBJ [sic] and NELP, and this is one place where I
9 hope where New York City actually should have been
10 leading in what was happening here. We're playing a
11 bit of catch up, but hopefully you can catch up and
12 surpass what many people have been doing. Thank you.

13 CHAIRPERSON MEALY: Thank you, and we're
14 going to turn it over to the Administration, but
15 before we do, could you raise your right hand and
16 confirm? Do you affirm to tell the truth, the whole
17 truth and nothing but the truth in your testimony
18 before this committee and to respond honestly to the
19 Council Member's questions?

20 : I do.

21 CHAIRPERSON MEALY: Let's get ready to
22 rumble. Thank you. This is Ms. Wally--Maya Wiley on
23 behalf of the Administration. You may start your
24 testimony.

25

1
2 MAYA WILEY: Thank you Chair Mealy,
3 Council Member Williams and members of the Civil
4 Rights Committee for convening today's hearing and
5 inviting me to testify on this important piece of
6 legislation. The Administration strongly supports
7 the goals of Intro 318, the Fair Chance Act. In his
8 platform, the Mayor was explicit about his commitment
9 to ensuring more and better employment opportunities
10 for New Yorkers who previously been convicted of
11 criminal offenses. Removing unnecessary barriers to
12 employment is a critical part of ensuring that all
13 New Yorkers rise together. The Mayor recognizes that
14 connecting formerly incarcerated individuals to jobs
15 is one of the best strategies for preventing
16 recidivism and supporting families, but is also aware
17 that employers too often judge individuals with
18 criminal histories unfairly, refusing to consider
19 them regardless of the type of criminal conviction,
20 how long ago it occurred, and whether or not it's
21 connected to the position in question. The Mayor's
22 also been strongly supportive of city policies
23 requiring agencies to consider an applicant's full
24 range of skills and preventing them from dismissing
25 such candidates out of hand, and he supported the

1 extension of such policies to private employers. So-
2 called ban the box measures ensure that New Yorkers
3 with previous convictions have a chance to compete
4 for position for which they're qualified. This can
5 have a dramatic impact on individuals' ability to
6 secure work that in turn translates into a reduced
7 chance of future involvement with the criminal
8 justice system. We know, for example, that on
9 average incarceration eliminates more than half the
10 earnings of a white men, that a white man would
11 otherwise have made through age 48 and 44 percent of
12 the earnings for Latino and black men respectively.
13 That amounts to an expected earnings loss of nearly
14 179,000 dollars just through age 48 for people who
15 have been incarcerated. And job seekers are not the
16 sole beneficiaries of such policies. Families also
17 do better when individuals with criminal histories
18 are able to secure stable, quality employment.
19 Interviews with family members of formerly
20 incarcerated men found that 83 percent had provided
21 some form of financial support upon the men's return.
22 Half reported that this had resulted in financial
23 challenges and 30 percent went further saying that
24 such obligations resulted in financial hardships.
25

1
2 Another recent study found that putting just 100
3 formerly incarcerated people back to work would
4 increase their lifetime earnings by 55 million
5 dollars, increasing their income tax contributions by
6 1.9 million, boost sales tax revenues by 770,000
7 while saving two million a year by keeping
8 individuals out of the criminal justice system. This
9 means that ban the box policies generate meaningful
10 benefits for cities and states as well. States and
11 cities across the country have noted the benefits of
12 such legislation. Thirteen states and over 70 cities
13 and counties have adopted ban the box measures.
14 We've just heard about New Jersey from Council Member
15 Williams, and I too agree that we can do better. But
16 we're not competitive. Thirteen states and over 70
17 counties, of those localities, Baltimore, Buffalo,
18 Chicago, Montgomery County Maryland, Newark,
19 Philadelphia, San Francisco, Seattle, Rochester and
20 Washington, D.C. extend those practices for private
21 employers. For all these reasons, the Administration
22 shares the Council's commitment to putting in place
23 stronger protections for New Yorkers with criminal
24 histories who are seeking employment opportunities.
25 We urge the committee as it continues to refine the

1 bill to draw upon the lessons that have been learned
2 in other jurisdictions and we look forward to working
3 closely with the Council to bring about legislation
4 that advances our shared goals and can effectively
5 implement across the public and private sectors. In
6 the interest of time, given that I think it's really
7 important to hear from the community as well, I'm not
8 going to--I'm just going to summarize some of the
9 existing programs that exist under the city. It's in
10 the testimony. The reason I note it is that, you
11 know, we know that ban the box is critically
12 important, but we also know that getting support
13 services to formerly incarcerated people to actually
14 access employment opportunities is part of what's
15 going to make ban the box legislation really
16 meaningful and impacting people's lives, and we're
17 really happy that there's a lot going on right now we
18 should be able to build upon together. So for
19 instance, the Mayor's Office on Criminal Justice
20 contracts with providers on re-entry services
21 including work force development and job readiness
22 for folks coming out of the criminal justice system.
23 The Department of Corrections has a multitude of
24 programs including I Can, which is a cutting edge re-

1 entry initiative, which includes job assistance and
2 Workforce 101, which is job readiness training, and
3 DOHMH has a food sector employment re-entry strategy,
4 and Department of Probation also is increasingly
5 supporting efforts on re-entry. So, there's more
6 than that going on, but I think it really is
7 important to recognize we need a really holistic
8 approach here. Ban the box, I think, is a really
9 important piece of that. And I will stop there.

11 CHAIRPERSON MEALY: Okay. I'm just going
12 to ask a few questions. I know my colleagues would
13 like to have some questions. Does Intro 318 do
14 enough to address the issues of ex-offenders being
15 treated fairly during the hiring process?

16 MAYA WILEY: So, I think that Intro 318
17 is really an important step. It's part of why I also
18 noted that other forms of programs is important,
19 including--and enforcement will be important as we
20 know. Unfortunately, there are studies that show
21 that, for example, black men with advanced degrees
22 and no criminal histories actually are just as likely
23 to be called for an interview as a white man with a
24 criminal history. So there is still racialized
25 issues that we should be addressing even with

1 important ban the box legislation, but that's not to
2 undermine the importance of the legislation, it's
3 just to note that it is important to enforce civil
4 rights laws. It is important to also provide re-
5 entry services to folks. Folks have to be able to be
6 qualified and to compete for jobs. So we want to
7 make sure they're able to do that.

9 CHAIRPERSON MEALY: And one thing I
10 wanted to--and this is my last question. I came to
11 really hear the pros and the cons to make sure that I
12 get a clear understanding. In relation to making
13 inquiries about an applicant's criminal background
14 check, when do you think it is appropriate time to
15 make such inquiries?

16 MAYA WILEY: So that's, I think that's a
17 complicated question, because I think, you know, sort
18 of consistent with 23A, you know, we have to think
19 about different job categories and what they require.
20 Obviously it makes sense to balance factors like the
21 relevance of the criminal history to the job. I
22 mean, the other factors like time. You know, so
23 different jobs may require different thinking and
24 whether to what extent there should be exemptions and
25 where they should be may also be a factor. So that's

1 something we'd really be interested in looking at
2 with you and working with you on, because obviously
3 it should be rational. It should be tailored to the
4 jobs themselves, and that's why I think the factors
5 under 23A are helpful to the extent that they
6 actually, you know, provide good guidance about
7 measuring that compared to the job.

9 CHAIRPERSON MEALY: Okay. I'm going to
10 turn it over to my colleague Mr. Williams. Would you
11 have any questions? I know Mr. King--

12 COUNCIL MEMBER WILLIAMS: Thank you, Madam
13 Chair. Thank you very much for your testimony. Just
14 one thing I wanted to make sure I repeated that you
15 said. Sometimes people think we're making stuff up.
16 But I believe that you said that a black male without
17 a criminal record and a higher education degree is
18 less likely to be called back for a job than a white
19 male with a criminal record?

20 MAYA WILEY: That's correct. There's a
21 study that existed, that--which is actually a New
22 York City based study. It's a huge study in terms of
23 the numbers of private employers that--and it was a
24 paired test, which means it took folks black and
25 white, of course it didn't include all racial

1 categories, but black and white and it had people in
2 different categories, criminal records, advanced
3 degrees, high school degrees, and unfortunately what
4 it found, and there are other studies nationally that
5 also suggest, that race still becomes a factor in
6 hiring, not just criminal. So that's something we
7 have to pay attention to as well.

9 COUNCIL MEMBER WILLIAMS: And that
10 happened in the liberal bastion of New York City. I
11 can only imagine what is going on in a place say like
12 Ferguson. But, just to move forward, I also wanted
13 to understand as well as the Chair mentioned just
14 some of the concerns that may be there. So, I know
15 we didn't get fully into the testimony, so I wanted a
16 chance to really drill into some of the concerns that
17 you may have. I did want to piggy back on something
18 that was asked about when is the best time to ask.
19 Because I don't--what exists now, I don't think
20 really addresses--that is not one of the factors that
21 we measure in when to ask. So are you saying when to
22 ask should possibly also be tailored by what type of
23 job you're applying for?

24 MAYA WILEY: Possibly. You know, I think
25 it's a conversation we should have, and part of why

1 we said we should look at the experiences of other
2 places that have done--and one of the benefits of not
3 being first is we can learn from the experience of
4 others and do better. So I'm just going to pull out
5 one example. So, Minneapolis, for example, which I
6 think has a progressive ban the box law removed--so
7 it removes the ability to ask, obviously, arrest or
8 conviction in the early stages of application, and it
9 also says that there is--and by the way it's shown
10 that it has dramatically increased hiring for people
11 with criminal histories, and I think that's
12 important, because that's our shared goal. It also
13 postpones a background check until a provisional
14 offer. In other words, they extend an offer, but
15 make the offer provisional on the background check,
16 and then they can take the background check into
17 account, but there are also exemptions, though. So,
18 there are certain job categories that are exempted
19 from that, from waiting for that provisional offer,
20 teachers, school bus drivers, peace officers,
21 apartment managers, residential mortgage originators.
22 Now, I have no insight into why they picked those
23 categories, and I think we'd obviously want to look
24 as a city from our own perspective and from our own
25

1 local experience whether and where that makes sense,
2 but the point is to say I think I am--I'm going to
3 say that I think there are probably some job
4 categories where we would say waiting for provisional
5 offer makes sense, and there may be some job
6 categories in which we think it might make more sense
7 to allow because of the sensitivity of the position
8 and potentially the criminal, whatever the criminal
9 background is with a range of factors. That might
10 make it make sense to allow an employer to ask
11 earlier in the process, but certainly, I think it's
12 really important to make sure people are getting a
13 fair chance to interview, and so it's really
14 important to make sure that it's taken into--it's not
15 taken into account at the wrong point in time so that
16 folks get a real fair chance to compete for the job.

18 COUNCIL MEMBER WILLIAMS: I think we
19 actually share that goal as well, which is why--what
20 we try to do is make sure--we know there's a lot of
21 thought that happened on this particularly in the
22 state about which jobs in particular are sensitive.
23 So the thinking that was like, exempting those that
24 already have laws existing, we would covers those
25 like teachers, like security guards. Other jobs

1
2 besides the ones that have already laws attached to
3 them that you think would be exempt?

4 MAYA WILEY: I think that's something we
5 want to look at a little bit more closely. So, I
6 think it's a very good question and we'd like to come
7 back to you on it.

8 COUNCIL MEMBER WILLIAMS: Sure. Are there
9 any other concerns, because I didn't get to read the
10 whole--I know you have a section concerns related to
11 Intro. I really want to try to get some of those
12 out.

13 MAYA WILEY: I mean, you raised one. We
14 just wanted to make sure we--we're going to be in
15 legal trouble in terms of state preemption issues,
16 but you've already raised that. So that was one we
17 wanted to make sure we were paying attention to.

18 COUNCIL MEMBER WILLIAMS: Okay. Any
19 others?

20 MAYA WILEY: Not that I can think of. I
21 mean, as I said, this is really also a priority for
22 the Administration and part of the Mayor's platform.
23 We just want to make sure we get it right, that we
24 help the most New Yorkers, and that we're sensitive
25 to some of the nuances, various types of positions.

1
2 COUNCIL MEMBER WILLIAMS: Thank you. It
3 sounds like we're really aligned on the goals here.
4 I think that's pretty cool. So, thank you very much
5 for coming and testifying and giving some insight on
6 where the Administration is. Thank you, Madam Chair.

7 CHAIRPERSON MEALY: Thank you. I just
8 have one question. How long is this--well, when they
9 ask them, how long will they be able to tell them
10 when they have job, in between those titles?

11 MAYA WILEY: You mean, in Minneapolis,
12 or?

13 CHAIRPERSON MEALY: Yes.

14 MAYA WILEY: I'm not sure. So, we would
15 have to check on that. We didn't go deep. We just
16 looked at the actual law. We didn't go behind some
17 of the practices in terms of how it's implemented.
18 That's a good question.

19 CHAIRPERSON MEALY: So, someone was going
20 for a teacher's job, I know they would have to do a
21 background check and ask them. So once they--you're
22 telling me once they accept the job, then they do the
23 background check.

24 MAYA WILEY: No, I'm saying--I'm sorry.
25 Let me--I was not sufficiently clear. These are

1
2 exempt from the ban the box provision, meaning they
3 can ask up front for these positions whether or not
4 there's an arrest or criminal history and do a check
5 before there is an actual offer, provisional offer,
6 is my understanding. It's different in different
7 localities.

8 CHAIRPERSON MEALY: Okay.

9 MAYA WILEY: And so that's why I say, you
10 know, there are a number of localities. They're all
11 doing it differently. They all exempt different
12 categories, and so getting a sense of which one--so,
13 we would want obviously for New York to make sure we
14 were tailoring to what makes sense for New York,
15 because obviously each locality has made some of
16 their own judgments about what makes sense. So I
17 would say we take Minneapolis and do what Minneapolis
18 has done, necessarily. I think we should look at
19 what makes sense for us.

20 CHAIRPERSON MEALY: For New York, okay.
21 My colleague, King?

22 COUNCIL MEMBER KING: Good morning.

23 MAYA WILEY: Good morning.

24 COUNCIL MEMBER KING: Counsel Wiley, I
25 want to thank you for today. I would like to say it

1 is refreshing to sit in a hearing and we can have a
2 mutual conversation. Everyone appears to be on the
3 same page. It's just how do we get the results, that
4 desire and that requirement in 318. So my questions
5 are going to be really light, because as I understand
6 there is something called double jeopardy, and the
7 thing that's amazing to me is that individuals who've
8 made mistakes, they've "via the law" have paid their
9 dues to society by serving time, and then they come
10 out and then they get actually held accountable for
11 that crime again when they were supposed to have paid
12 and did time already. So, this is what we're trying
13 to offer here, and I thank Council Member Williams
14 for this legislation. So, I guess my question goes
15 back to are there any challenges in the
16 Administration right now that would ever deter or
17 stop them from trying to get this done, and is there
18 any fiscal impact on doing this that might say well,
19 we're going to--that'll get in the way of doing this?
20 And if not, what would--any concerns that you do
21 have, what would you be willing to do to offer this
22 to the conversation to help us improve it so we can
23 get this done?
24

1
2 MAYA WILEY: I mean, the short answer is
3 this is an Administration that shares these goals.
4 So, I don't see philosophically any problem with
5 moving forward. I think the issue is just refining
6 and how and looking at some of the specific job
7 areas, what kinds of exemptions if any, that sort of
8 thing. In terms of the cost, I think there's no
9 question that there's probably some administrative
10 cost that this adds for our agencies. I don't know
11 what those are because we haven't done an analysis.
12 The fact of adding administrative cost in and of
13 itself is not a barrier, given, as I've said, the
14 studies show that there are many different ways in
15 which benefit comes back to cities and states when
16 people are able to earn and support the tax base.
17 So, the fact of an administrative cost itself is not
18 necessarily a problem unless it becomes prohibitive
19 in some way. So we would certainly need to get some
20 analysis from OMB, but that in and of--just the fact
21 of some increased administrative cost, unless it's
22 prohibited for some reason, shouldn't be a barrier, I
23 don't think.

24 COUNCIL MEMBER KING: Okay. So, my final
25 question would be, can I rightfully make the

1 statement that the Administration is excited and 100
2 percent on board in making sure that one day Intro
3 318 is passed?
4

5 MAYA WILEY: This Administration is
6 strongly committed to making sure we have some form
7 of strong ban the box legislation. So, I think the
8 short answer is yes. I think the question is just
9 the--you know, the devil's always in the details, and
10 we just have a few details that we want to look more
11 closely at and work with you on, and we're looking
12 forward to a really productive partnership to get it
13 done. And I will say as, you know, one of the great
14 privileges I have in being Counsel to the Mayor as
15 the person who comes with a civil rights and human
16 rights background, is that this is really a pillar of
17 how the Administration is thinking across a broad
18 range of issues. So, I think we're veery much
19 aligned. We want to make sure we get New Yorkers to
20 work. We want to make sure New Yorkers get a fair
21 chance, no matter their backgrounds, whether racial,
22 religious, age, gender, criminal history. You know,
23 we want New Yorkers back to work. We want New
24 Yorkers able to support their families, and want this
25 city rising together.

1
2 COUNCIL MEMBER KING: Well, I want to
3 thank you. And everyone in the room did you hear
4 that? The Administration's saying yes, they want to
5 help us get this done.

6 [applause]

7 COUNCIL MEMBER KING: So, thank you and
8 have a blessed day, and season's greetings. Madam
9 Chair, thank you.

10 CHAIRPERSON MEALY: Thank you. My
11 colleague Williams has one more question. You'll
12 wait? Okay. Glad to see our Borough President Gale
13 Brewer's in the house. Kudos. Corey Johnson?

14 COUNCIL MEMBER JOHNSON: Thank you, Madam
15 Chair for the opportunity to speak today. I also
16 want to thank Council Member Williams and Council
17 Member Torres who I've worked with this on, and I
18 want to thank you for holding this incredibly
19 important hearing today as well as give thanks to my
20 Borough President, Gale Brewer, who has been a leader
21 on this for so long. Ms. Wiley, thank you for your
22 testimony. I was able to read most of what you
23 weren't able to put into the record today in, you
24 know, making sure there was time for everyone else. I
25 had a couple of questions around Executive Order 151,

1 which the previous Administration Mayor Bloomberg had
2 signed. So, do you--is it your judgment that
3 Executive Order 151 has actually helped people with
4 criminal records be able to achieve gainful
5 employment and overall has had positive results where
6 it was implemented for city agencies?
7

8 MAYA WILEY: I can't answer that from an
9 empiric standpoint. In other words, I don't know if
10 anyone has actually looked directly at the impact.
11 We certainly know from studies nationwide that ban
12 the box provisions do increase employment
13 opportunities for people who are formerly
14 incarcerated or have arrest records. So, I would
15 guess, and it's only a guess, that it has had some
16 impact. I think moving it to legislation makes sense
17 and gives us good implementation process when we have
18 it legislated. I will say that I applaud the
19 Bloomberg Administration for having had the Executive
20 Order. A personal friend of mine, Andrea Batista
21 Schlesinger, worked on it when she was in the
22 Bloomberg Administration, and she did give me a
23 talking to and said, "Don't let that Executive Order
24 go out." And I was like, "We going to do more than
25 that Executive Order." So, I say that to say I would

1
2 assume it's had some positive impact. I can't say
3 that empirically, but just based on what we know to
4 be the case from other studies, I think it would--it
5 was probably helpful.

6 COUNCIL MEMBER JOHNSON: The Executive
7 Order did outline that starting in 2011, I believe,
8 that DCAS undertake a two year pilot program to
9 ensure compliance with city agencies that were
10 effected. What are the results of that pilot
11 program?

12 MAYA WILEY: That is correct, and that
13 pilot program was underway, and actually we--DCAS is
14 here, and I wonder if you just want to--if I can just
15 ask someone from DCAS just to answer the specific
16 question. It does operate, obviously, differently
17 from how Intro 318 would operate because it is based
18 on the Executive Order, which is obviously formulated
19 differently. Do you want to come forward?

20 BRIAN GOLDBERG: Hi, I'm Brian Goldberg
21 from DCAS.

22 CHAIRPERSON MEALY: Hello. Could I swear
23 you in before you--

24 BRIAN GOLDBERG: Sure.
25

1 CHAIRPERSON MEALY: Raise your right hand
2
3 please. Do you affirm to tell the truth, the whole
4 truth and nothing but the truth in your testimony
5 before the committee and to respond honestly to
6 Council Member's questions?

7 BRIAN GOLDBERG: Yes.

8 CHAIRPERSON MEALY: And state your name
9 please.

10 BRIAN GOLDBERG: Brian Goldberg.

11 CHAIRPERSON MEALY: Thank you. You may
12 proceed.

13 BRIAN GOLDBERG: Okay, so--I'm sorry, can
14 you just state question? Do you want to know about
15 the Executive Order and--

16 COUNCIL MEMBER JOHNSON: [interposing] The
17 two year pilot program and looking at compliance for
18 the agencies that were effected and what the results
19 are.

20 BRIAN GOLDBERG: Sure. So, in 2011 there
21 were a couple of things that were required. One of
22 them was to train the agencies, which we did in 2011.
23 We also--about how to consider criminal convictions
24 in hiring. We also directed all the agencies to
25 remove questions about criminal convictions from pre-

1
2 employment applications. So, many agencies have
3 questions about arrests or criminal convictions in
4 documents that were filled out by applicants. Now,
5 for those agencies that were covered by the Executive
6 Order, they were told in 2011 to make sure that there
7 were no questions regarding that for their
8 applicants, and they also sent copies of their new
9 applications, of the revised applications to DCAS at
10 that time so that we could confirm that and we did.
11 We also did quarterly--we requested quarterly data.
12 We'll have to get back to you about the results, but
13 basically because agencies weren't asking about
14 criminal convictions, they wouldn't necessarily know
15 who wasn't selected who had a criminal conviction.

16 COUNCIL MEMBER JOHNSON: Thank you.

17 That's helpful. And I know that there was a carve-out
18 as part of that Executive Order, which carved out the
19 Department of Education, NYCHA and the Health and
20 Hospitals Corporation, but they were allowed to
21 comply if they wanted to. Have any of those three
22 agencies opted to participate in this?

23 BRIAN GOLDBERG: Those three agencies are
24 not handled by DCAS for investigations, so I don't--

1
2 COUNCIL MEMBER JOHNSON: [interposing] Ms.
3 Wiley, do you know?

4 MAYA WILEY: I actually don't know, but
5 we can get the answer to that question for you.

6 COUNCIL MEMBER JOHNSON: Okay. So, I just
7 want to just ask a question following up on what
8 Council Member Williams asked. If you could just
9 please reiterate what do you think the jobs are that
10 should be exempt as we move forward legislatively,
11 and if you could be as specific as possible, the
12 exact jobs that you think that should not look at.

13 MAYA WILEY: I can't, because we think
14 that should be a consultative process and one that
15 actually, you know, where we actually look at that
16 seriously, and we haven't had time to do that. So, I
17 don't know sitting here today.

18 COUNCIL MEMBER JOHNSON: Are there any
19 initial thoughts?

20 MAYA WILEY: Well, the initial thoughts
21 are obviously we want to look at law enforcement. We
22 want to look at positions in which there are
23 questions of public trust where they may be criminal
24 convictions that relate to the ability to trust the
25 conduct of the person, but I think it should--so I

1 think those are the things we really want to make
2 sure we're paying close attention to. Obviously,
3 particularly when we're looking at government
4 agencies, what I think private employers have some
5 similar concerns that we have to make sure that we're
6 protecting the integrity of any of the job
7 categories. So, to the extent that there may be
8 issues with whether say would you want to say that
9 someone who is an accountant whose been convicted of
10 embezzlement three years ago should be able to
11 actually be an accountant, you know, that's I think
12 open to a reasonable discussion. So we would want to
13 have that discussion. But at the same time, we're
14 not--we're walking in open-minded, not close-minded,
15 so we're not coming in with a list saying unless
16 this, we will not support. We really want this to
17 work. We want it to be rational. We want it to be
18 tailored, and so that's why we want to have a
19 consultative process.

21 COUNCIL MEMBER JOHNSON: Well, I want to
22 thank you for your testimony here today. It's welcome
23 that this Administration is supportive in concept and
24 broadly of this bill. I feel very strongly that it
25 is really important that we not be punitive toward

1
2 people who have done their time, paid their debt, are
3 trying to get back on track in their lives and be
4 productive members of society and of our city, and so
5 I think this is the right thing to do in allowing
6 people to actually be productive members of society.
7 We said it earlier in a press conference, but I think
8 it's important to repeat. Council Member Williams
9 mentioned it. None of us would want to be judged at
10 one bad point in our lives when something happened,
11 and not allowing people to get their foot through the
12 door and be judged on who they are and what they've
13 done in the intervening time is not good for society.
14 It's not good for our city. It's not good for the
15 individual, and so finding the way to be sensitive on
16 how to handle this for sensitive positions, but also
17 taking away the punitive treatment that sometimes is
18 given right now I think is an important step forward
19 in making sure that we level the playing field a bit
20 and make sure that people actually have real
21 opportunities to succeed. We talk about
22 rehabilitation and actually letting people get back
23 into society and be contributors to society, and I
24 think this piece of legislation puts us on that arc.
25 So I look forward to working with Council Member

1
2 Williams and Council Member Torres and Chair Mealy on
3 making sure that the final product is a good product
4 and that we as a Council are able to pass this
5 sometime in the near future. Thank you very much.

6 CHAIRPERSON MEALY: Thank you. Council
7 Member Torres?

8 COUNCIL MEMBER TORRES: Thank you, Madam
9 Chairwoman. I just want to express my gratitude for
10 the opportunity to work with Council Member Williams,
11 Council Member Johnson and Borough President Gale
12 Brewer, and I want to thank you for your testimony.
13 What does state law have to say regarding employment
14 discrimination?

15 MAYA WILEY: Well, the state has,
16 actually the city has some of the strongest anti-
17 discrimination laws in the country, and I would say
18 stronger than the state. Generally speaking, as you
19 know, 23A is what is most closely aligned to what
20 Intro 318 is trying to do and does pre-emps. We have
21 to make sure we're consistent with 23A. Having said
22 that, I think our standard really should be the
23 city's law, because it is one of the most progressive
24 anti-discrimination laws in the country.
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COUNCIL MEMBER TORRES: So assuming state and city law prohibit discrimination on the basis of a criminal record?

MAYA WILEY: So, you know, currently this only exists in the form of the Executive Order itself, not in city law, which is why I think, you know, Intro 318 is a very important step to expand our civil rights laws, because I do think of this as being a useful tool, anti-discrimination tool, not purely obviously on the grounds of race, but we also know that it will help us where there is a disproportionate impact, particularly on communities of color because of the disproportionate rates of incarceration, arrests and convictions of people of color. So I do think it's an important companion to our anti-discrimination laws that we have in the city.

COUNCIL MEMBER TORRES: I could be mistaken, but I was under the impression that state law prohibits discrimination on the basis of a criminal record. That was my understanding--

MAYA WILEY: [interposing] Yeah, so this is--so 23A, right.

COUNCIL MEMBER TORRES: Okay.

1
2 MAYA WILEY: So, the Article 23A, which we
3 must follow as a city, which I think is a helpful
4 step and I think what we're trying to do and we agree
5 with the committee's leadership on this is find ways
6 that the city can do more.

7 COUNCIL MEMBER TORRES: So it seems like
8 the--

9 MAYA WILEY: [interposing] As long as
10 it's not pre-empted by state law.

11 COUNCIL MEMBER TORRES: The Fair Chance
12 Act is pretty modest, right? You cannot ban
13 discrimination without banning the box, and so the
14 Fair Chance Act in many ways is an attempt to make
15 state law more enforceable. Is that--would that be
16 an accurate assessment or?

17 MAYA WILEY: I would actually state it a
18 little more strongly, which is I don't think it's
19 modest.

20 COUNCIL MEMBER TORRES: Please do.

21 MAYA WILEY: I don't think Intro 318 is
22 modest. I think it does go--it allows, my
23 understanding, is it allows us to be consistent with
24 state law where state law has pre-empted us, but go
25 beyond state law where state law has been silent. So,

1 I would say given that analysis that it actually is
2 bold, and I think that's--my assumption is that's the
3 intent is to be bold within the limits of state law
4 where we are limited. So, I think it's an impressive
5 step.
6

7 COUNCIL MEMBER TORRES: And I think it
8 goes without saying that--

9 MAYA WILEY: [interposing] I say that as
10 a good thing, not as a critique.

11 COUNCIL MEMBER TORRES: But it goes
12 without saying that, you know, we have an interest in
13 maximizing the number of people who are employed in
14 our city, and see employment not only as an
15 individual benefit, but as a public growth.

16 MAYA WILEY: That's a fact.

17 COUNCIL MEMBER TORRES: So, for me, the
18 benefits of the Fair Chance Act are, you know, no
19 issue is ever as clear as it seems, but for me it's
20 clear cut and overwhelming, you know, a job that gets
21 people out of poverty. It prevents recidivism. It
22 enables economic mobility. It stabilizes families
23 and communities. Can you--give me a credible counter
24 argument. Am I missing something? Is there
25 something? Because for me, it's clear cut.

1
2 MAYA WILEY: I think you have to ask
3 someone else to testify if you want an argument
4 against it, because you're not--

5 COUNCIL MEMBER TORRES: [interposing] I
6 want to know what concerns are out there. What
7 concerns have you heard? I'm sure--

8 MAYA WILEY: [interposing] Well, as I
9 said, I mean, the concerns that we have heard are the
10 ones I've already raised, which is just making sure
11 that to the extent there are positions where a
12 criminal conviction may be indicative of something to
13 be concerned in terms of public trust or the position
14 itself. I think that's where we want to pay some
15 attention. Almost in all of the jurisdictions we've
16 talked about there is some form of exemptions. The
17 exemptions are different in different localities and
18 states, and that's why I said we would want to look
19 at that for what makes sense for New York and for
20 advancing the goals of the legislation, which we
21 absolutely not only agree with, strongly support. And
22 let me just give you one statistic which you've
23 studied, which you probably know about, but the
24 likelihood of employment increases, I think it's up
25 by 50 percent just by eliminating the ability to

1
2 prevent a criminal history or arrest history to be
3 utilized before a call-back interview. That step in
4 itself is--has a pretty dramatic impact on increasing
5 people's ability to compete for and actually get a
6 job. So we absolutely agree that it's really
7 important to create these protections, and I
8 absolutely agree with you on the importance of
9 getting people to work and ensuring that people are
10 given a chance to do work that they're qualified to
11 do and for which there's no really good justification
12 for preventing them from doing it because of
13 something that happened 10 years ago that's unrelated
14 to the position itself. I mean, that obviously is
15 just good policy.

16 COUNCIL MEMBER TORRES: And I know you
17 unequivocally support the bill in the abstract or the
18 goals of the legislation, but I'm sensing some degree
19 of trepidation about details, but I think it's worth
20 nothing and I think you've pointed this out, that
21 we're not going in uncharted territory here, that
22 this has been tried and tested, you know, over 60
23 cities and counties throughout the country, and so is
24 there any beyond?

25

1
2 MAYA WILEY: Trepidation, no. I think
3 the real issue here is in each of those areas, the
4 exemption lists are not the same, and so we have to
5 do our analysis for what works for New York in terms
6 of that exemptions list. Everyone has an exemptions
7 list. The question--and we're not going to cut whole
8 cloth for New York what someone else has done,
9 because we want to look and see what works for New
10 York. We couldn't even decide which even if we
11 wanted to cut and paste and copy. Who would we cut
12 and paste and copy? They're all different. So we
13 really just need to go through our own process and
14 make sure it's something that works for us. That's
15 not trepidation, that's just good policy making.
16 That's the way I see it.

17 COUNCIL MEMBER TORRES: No, it's good
18 policy making. I'm just wondering, you know, we can
19 draw on the--yes, I mean, obviously New York City has
20 its own set of dynamics, but there are some parts,
21 part of the core can be replicable and if there are
22 unintended consequences given just the depth and
23 breadth of experience with, you know, ban the box and
24 the United States, we would know about those
25 consequences. So, I'm not clear. Is there anything

1
2 in the experience with these legislation in other
3 cities that should give us pause at all, or?

4 MAYA WILEY: That's what we have to look
5 at. I think that's what we should look at. So, we
6 don't want to do--

7 COUNCIL MEMBER TORRES: [interposing] But
8 it seems to me that conventional wisdom is that the
9 legislation is quite successful, that it's been
10 effective at--

11 MAYA WILEY: At--yeah. As I've said, ban
12 the box legislation has been very successful at
13 increasing employment opportunities for people with
14 arresting conviction records, which is why we support
15 this direction. I think the only thing we're talking
16 about is which exemption list will make sense for
17 this city because everybody has them and they're not
18 all the same. So what we want to do is say what works
19 for us. I think there is something we can try to
20 learn and understand from the experiences of other
21 places that have different exemptions list that can
22 inform us and certainly won't control what we
23 ultimately decide for New York, because again, at the
24 end--you know, I think the leaders of this city are
25 in the best position to understand what can work and

1
2 not work here based on experience and that's why a
3 good collaborative process, I think, will get us
4 there. I think we see it in this, you know, frankly
5 a great collaboration to get this done.

6 COUNCIL MEMBER TORRES: Maybe I'm missing
7 the nuance, but I feel like for exemptions that have
8 to be made, I would imagine they're universal. Like,
9 do you feel like there's an exemption here that's
10 appropriate here but not elsewhere in the country,
11 or?

12 MAYA WILEY: I'm not sure I understand the
13 question. As I said, since the exemption lists are
14 different in different places, there's not one
15 universal on exemptions that I'm aware of, because
16 each legislation locally is different, they're not
17 all identical. So they--some only banned it, for
18 instance, banned the box only in the pre-application
19 stage. Some do it to conditional employment. They
20 have different job categories for which they might
21 exempt from the ban the box restrictions. So, I
22 think, you know, that's what we need to look at is
23 just the exemptions list. I think, you know, we're
24 in agreement that we need to have both a bill that is
25 supportive at the pre--at the pre-application

1 process, but also there are going to be many job
2 categories where it's going to make sense to say, you
3 know, we think we should not be discriminating
4 against people not doing a background check until
5 appropriate time which will be post-provisional
6 offer. The question is which job categories might be
7 exempted from that. We enter this with an open mind
8 about what that might be, not with a pre-determined
9 list of what that can't be. I think I've said what I
10 think are the kinds of things we should look at, and
11 I think it's a great opportunity that other places
12 have different exemptions list to understand some of
13 the impacts where it might be problematic and we
14 wouldn't want to replicate, for example, in New York
15 and where there might be some good guidance where we
16 think, you know, we should think about that for this
17 city based on other's experience.

18
19 COUNCIL MEMBER TORRES: And as far as the
20 legal validity of the legislation, you're confident
21 it would survive, you know, if there's a challenge in
22 court that the legislation would survive, or?

23 MAYA WILEY: Well, it depends on the
24 challenge and depends on the ultimate legislation.
25 If we were to, for instance, pre-empt state law, no,

1 we wouldn't survive. That's not my understanding of
2 what the direction of the legislation is. So I'm not
3 overly worried about that, but certainly at the end
4 of the day, a lawyer will only make that analysis
5 when there's a final--when there's a final piece of
6 legislation, but no, I mean, this is something that
7 states and localities have been doing now and exist
8 in a number of places. So, as long as we're not
9 getting into pre-emption territory, we should be able
10 to carve out something that really works for this
11 city.
12

13 COUNCIL MEMBER TORRES: And just--well,
14 one final thought. I'd be curious to know just based
15 on how we can draw on the experiences of other cities
16 if there is--I know, you know, the ban the box varies
17 widely from municipality to municipality, but I'm
18 wondering if there is an example of ban the box
19 that's seen as the gold standard. You know, that's
20 something I'd be curious to look into, if there's one
21 that's particularly highly regarded. That's a
22 question that I could pose to some of the advocates--

23 MAYA WILEY: [interposing] Yeah, no. I
24 think it's a great question for advocates and I think
25

1
2 there is some good research out there that'll be
3 useful to draw on.

4 COUNCIL MEMBER TORRES: Okay.

5 CHAIRPERSON MEALY: Could I ask--could I
6 piggy back on that?

7 COUNCIL MEMBER TORRES: Yeah.

8 CHAIRPERSON MEALY: So what is the
9 Opportunity Compare Act--Compete Act? Is that kind
10 of like the same as the New Jersey one? Is that--
11 it's like--no? Just to say you want to see a
12 comparison, maybe that, say maybe is across the
13 board. Why is that one--or why we didn't adopt that
14 one? It could have been same, but ours are more
15 stringent than that act.

16 MAYA WILEY: Background--I'm just looking
17 at my summary sheet for New Jersey for Newark. I
18 mean, I think the--it incorporates the--

19 CHAIRPERSON MEALY: [interposing] I think
20 the EOC adopted--

21 MAYA WILEY: [interposing] EOC criteria.

22 CHAIRPERSON MEALY: earlier this year.

23 MAYA WILEY: Background check--is this the
24 one for earlier this year? Let me come back to you,
25 because I-- we have a--we have obviously pulled

1
2 examples from a range of states and there's been good
3 research that is compared with--

4 CHAIRPERSON MEALY: [interposing] That
5 would be a good one for you--

6 MAYA WILEY: [interposing] So, I think
7 it's a good question, because I think the point is
8 there is a lot we can learn from and that that's a
9 useful thing to do.

10 CHAIRPERSON MEALY: Yes, thank you, I
11 would want to know that too. I just a quick
12 question. I try to get both sides of everything. In
13 this legislation, an employer would have to wait now
14 seven days after they offer them the job, or?

15 MAYA WILEY: In Intro 318?

16 CHAIRPERSON MEALY: Yes, 318.

17 MAYA WILEY: Yeah. There is--

18 CHAIRPERSON MEALY: [interposing] So, in
19 between--

20 MAYA WILEY: There is a requirement, we're
21 just--yeah, I think the way it's worded, but actually
22 perhaps Council Member Williams could speak to this
23 more directly, but it's holding--the requirement is--
24 the operational--so, following the inquiry, but
25 before taking adverse action providing the employee

1 with a written inquiry, utilizing the 23A analysis
2 and holding the position for seven days in order to
3 give the person a chance to respond. In other words,
4 because you are allowed to do a background check at a
5 certain point, you have to offer--

7 CHAIRPERSON MEALY: [interposing] But now
8 we stating that if they do offer them the job, they
9 would have to, that employer would have to leave that
10 job open for seven days until they do the background
11 check and then offer them the job?

12 MAYA WILEY: I think it's a--

13 CHAIRPERSON MEALY: [interposing] And
14 then do a written statement that we've accepted you
15 or did not accept you?

16 MAYA WILEY: So this is something we
17 should come back on, I think, because we just want to
18 make sure we understand how it would operate. My
19 understanding is this is where, you know, we just
20 need to understand it.

21 CHAIRPERSON MEALY: Do you know how this
22 would affect small businesses?

23 MAYA WILEY: Yeah, I mean, I think--

24 CHAIRPERSON MEALY: [interposing] Mom and
25 Pop stores, they would have to apply just as well.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MAYA WILEY: I can imagine, and I can only--I can't say that I've actually spoken to people. Certainly, these are the kinds of operational questions where I can imagine employers saying, you know, the time--you know, that there is-- there is obviously something that is going to be a cost whether it's to the--

CHAIRPERSON MEALY: [interposing] Think about that, the cost.

MAYA WILEY: Yeah, whether--cost and also delay in filling the position and creating some additional steps that employers have to go through before a position is filled. So I think there's no question that there's an impact there on employers, and I think that's--the question is creating the right balance between--

CHAIRPERSON MEALY: [interposing] That's what I was--

MAYA WILEY: [interposing] the employer's ability to fill fairly. I mean, obviously, it still has to be a fair process for applicants, but one that makes sense for the usual job cycle.

1
2 CHAIRPERSON MEALY: Do the Administration
3 think that--well, do you think it could be for the
4 small business owners, maybe a shorter time span?

5 MAYA WILEY: I think this is something we
6 should look at. I think this is our point about, you
7 know, the principles are clearly important and I
8 think there are a whole lot of job categories--

9 CHAIRPERSON MEALY: [interposing] They
10 are.

11 MAYA WILEY: And I think we just have to
12 really make sure that we're understanding how it
13 would be implemented and what the impacts would be so
14 that for anything that's reasonable that we can
15 identify, we're making sure we're not creating any
16 undue burdens on employers that we would not actually
17 want to impose, and it might be by--it might be for
18 certain types of employers, might be where we look.
19 Certainly, that's a possibility.

20 CHAIRPERSON MEALY: So how would someone,
21 if they are offered the job, the employer would give
22 it to them in writing or telephone call?

23 MAYA WILEY: So, there is, my
24 understanding is that there is a provision that
25 requires a written response, and a written response--

CHAIRPERSON MEALY: Snail mail or email?

MAYA WILEY: I'm not sure. I'm not sure it's clear, you know, in terms of how the legislation's currently crafted, how that gets delivered, but it is my understanding that it requires written, but I could be wrong, and we want to just go back, but that's my understanding of it is that it's a written inquiry. So, that if an employer's going to say we now having done this background check, you know, now want to say we're not sure we want to hire you, even though we would give you a provisional hire, and we're going to give you a written document stating that and stating why and holding it open to give you an opportunity to tell us why we're wrong is my understanding of how it's intended to operate, but I think that's more of a question for the committee in terms of its intent of the--

CHAIRPERSON MEALY: [interposing] So what about the Administration, do the Administration feel that they open up themselves to--

MAYA WILEY: I think there are questions about the impact of this operationally, and I think this is why we--I think it's a reasonable area to

1
2 take a look at to see, you know, how is it going to
3 work, how's it going to be implemented, where does it
4 create burdens and what kind, and does it have some
5 adverse impacts we don't intend, and where we can
6 still advance the goals of the legislation, but
7 potentially maybe in different ways for certain job
8 categories or for certain kinds of employers. I
9 think that's a fair question.

10 CHAIRPERSON MEALY: I really hope, because
11 we don't want our people who have been discriminated
12 against, doors closed in their face numerous times,
13 and then when they call back to say they don't want
14 me because they found out that I did a robbery when I
15 was 17. And now, they saying no also, and then they
16 can say I want to sue. I just want to make sure we
17 make, we have a timeframe that they can do that and
18 that they don't be demoralized again with trying to
19 get a job and doing it properly and knowing that they
20 did their time. They're upright citizens, and we do
21 not want to make them feel any worse again,
22 especially with a job application.

23 MAYA WILEY: Well, I think it's an
24 important point. I also think that this is also where
25 we want to look at the exemptions.

1 CHAIRPERSON MEALY: Please.

2 MAYA WILEY: Because we need to think
3 about for which types of positions and which kinds of
4 offenses might we create an exemption, because to
5 have this, the burden placed on employers might not
6 be reasonable in light of what those offenses are or
7 and the position itself and lengthening the process
8 and it may be quite costly. And frankly, you know,
9 one of the things we might want to consider is the
10 unintended impact on other folks who are formerly
11 incarcerated who might be able to get those jobs who
12 then, you know, are potentially not--what am I trying
13 to say? That are potentially not given the
14 opportunity because there's a lengthy process with a
15 different person with a criminal record, right? So,
16 in other words, giving an ability for employers to
17 sift where it makes sense.

18 CHAIRPERSON MEALY: That's all I want.

19 MAYA WILEY: Right, just where it makes
20 sense, but I think that's our question, you know, how
21 we look at together where it might make sense to
22 create those exemptions because of these kinds of
23 issues. I think this is something, by the way, we
24 can absolutely do. So I don't see this as something
25

1
2 that is insurmountable in any way. I think it's just
3 a thoughtful process--

4 CHAIRPERSON MEALY: [interposing] I'm
5 glad.

6 MAYA WILEY: that I think we can do thanks
7 to research, thanks to a great advocacy community
8 whose been looking at this and are expert on this,
9 and thanks to the fact that we're all committed to
10 the same principles and goals.

11 CHAIRPERSON MEALY: And when you rarely
12 hear that it's always--so it's good that everyone is
13 on the same page. I just want to make sure our
14 constituency do not get double jeopardy and hurt,
15 discriminated against again, just in case with
16 employment. So I'm going to turn it over to my
17 colleague, and we've been joined by Council Member
18 Mathieu Eugene of Brooklyn.

19 COUNCIL MEMBER WILLIAMS: Thank you,
20 Madam Chair. Thanks for your patience in all the
21 questions, but I did want to drill down a little bit
22 with you some of the concerns, and so I wanted to
23 just specifically talk about one and then just ask a
24 question that's more general. So, specifically, the
25 Administration believes a limit [sic] imposing

1 limited look-back periods as pre-empted by revisions
2 of Article 23A. So I want to talk about that, that
3 particularly pre-emption a little bit. So, can you
4 explain why you think the look-back period would be
5 pre-empted?
6

7 MAYA WILEY: Yeah, I'm going to actually--
8 my Deputy Counsel, Brittany Saunders, has actually
9 been looking at that for us. I'm going to have her
10 answer that question.

11 COUNCIL MEMBER WILLIAMS: Sure.

12 BRITTANY SAUNDERS: So, 23A sets forth an
13 eight factor--

14 MAYA WILEY: [interposing] Oh, do you
15 want to--

16 BRITTANY SAUNDERS: Sorry.

17 CHAIRPERSON MEALY: Do you affirm to tell
18 the truth, the whole truth and nothing but the truth
19 so--no, I'm just--just joking, sorry--nothing but the
20 truth in your testimony before this committee and to
21 respond honestly to Council Member's questions?

22 BRITTANY SAUNDERS: I do.

23 CHAIRPERSON MEALY: And state your name
24 please for the record.
25

1
2 BRITTANY SAUNDERS: My name is Brittany
3 Saunders.

4 CHAIRPERSON MEALY: Thank you. You may
5 begin.

6 BRITTANY SAUNDERS: So, Article 23A sets
7 forth the series of eight factors that need to be
8 considered when making a determination about the
9 applicability [sic] of criminal history to an
10 employment or licensing decision, and though that
11 list includes, right, it includes a length of time
12 that is elapsed between the offense in question and
13 the current consideration. It doesn't include a cut-
14 off date or a look-back period of its own. So it
15 basically suggests that the intent of the state was
16 to have that information considered regardless of how
17 long ago the offense took place, but again, as part
18 of a nuanced and wholesale evaluation process.

19 COUNCIL MEMBER WILLIAMS: That's in the
20 criminal law?

21 BRITTANY SAUNDERS: Hm?

22 COUNCIL MEMBER WILLIAMS: That's a
23 criminal, in the criminal law?

24 BRITTANY SAUNDERS: Is Article 23? It's
25 in the correction law.

1 COUNCIL MEMBER WILLIAMS: Correction law.

2 BRITTANY SAUNDERS: Yeah.

3 COUNCIL MEMBER WILLIAMS: But this one is
4 going in the human rights law, so would that make any
5 difference?
6

7 BRITTANY SAUNDERS: No, it's still a
8 question of whether the state itself has kind of
9 occupied the space or regulated this, and in this
10 instance it looks like there is in fact a conflict
11 between what's being proposed in 318 and what's--

12 COUNCIL MEMBER WILLIAMS: [interposing]
13 Okay. I think as of now we've been talking about it,
14 and think we disagree slightly whether they do occupy
15 that entire space, the correction of human rights.
16 So I think that's something we'll continue to
17 discuss. I did just want to ask in general, it says
18 in addition there are other changes that must be made
19 in order to strengthen the bill. Do you have any
20 other specific changes that you'd recommend today?

21 BRITTANY SAUNDERS: Well, I mean, Maya's
22 talked about some of the operational difficulties
23 that we need to consider and weigh as we figure out
24 how we're going to get to a piece of legislation that
25 can really be effectively implemented. So I think

1 that's a lot of what we were thinking about. There
2 are some other kind of, you know, kind of smaller
3 linguistic things about the definition of terms and
4 how they might be changed and other things that are
5 outlined in our testimony.

7 MAYA WILEY: Yeah, and just to be clear,
8 we don't see any of these insurmountable, and I think
9 the pre-emption question as I was trying to say
10 earlier, it is a legal question and it just requires
11 closer legal review to ensure that whatever the
12 ultimate bill becomes we feel confident is not pre-
13 emptive. That's all.

14 COUNCIL MEMBER WILLIAMS: Thank you, and
15 appreciate your time today, and with all due respect
16 to your position, I'm sure on behalf of Robert
17 Cornegy and I we'd like to say you have a wonderful
18 hairstyle. Thank you.

19 MAYA WILEY: Thank you for your
20 leadership. This is a really important issue and we
21 applaud the committee for taking it up.

22 CHAIRPERSON MEALY: And I want to thank
23 you Counsel Wiley. I just--we really have to really
24 look into this thinking about the licensing. I was
25 just thinking about imagining someone who used to

1
2 when they was a teenager sold drugs and then they
3 want to become a army guard, to get a licensing for a
4 gun, what kind of criminal background checks they
5 would have to go through. So I'm looking forward to
6 really seeing this legislation, and I'm glad everyone
7 on the same page. I want to thank you for your
8 testimony. Going to have testimony by our awesome
9 Gale A. Brewer, Manhattan Borough President. No
10 applause please, please, please.

11 GALE BREWER: I'm ready.

12 CHAIRPERSON MEALY: We do not have to
13 swear you in.

14 GALE BREWER: Oh, okay. Thank you very
15 much.

16 CHAIRPERSON MEALY: Thank you.

17 GALE BREWER: Thank you very much. I am
18 Gale Brewer. I am the Manhattan Borough President,
19 and I want to thank Chair Mealy, and I certainly want
20 to thank Council Member Williams and King and Torres
21 and Johnson. I know Danny Dromm was here earlier,
22 and thank you Council Member Eugene. I want to just
23 make sure that Ms. Wiley that Andrea Batista
24 Schlesinger tells me what to do also. And I also
25 want to thank, I know that there are many people here

1 in the audience, but I particularly want to thank
2 Paul O'Keefe [sp?] from Community Service Society,
3 because he's been with us at so many of these
4 different meetings. I am really proud to have
5 cosponsored with many of you this Intro 318, the Fair
6 Chance Act. It's an act that when I was in the
7 Council I originally sponsored thanks to the
8 Coalition of Employment and Training and many others.
9 And I think just as the bill implies, the act is
10 intended that all job applicants be considered
11 fairly, whether or not they have a prior criminal
12 record. I think you know that this population faces
13 immense challenges. Within one year after release
14 from incarceration, 60 percent remain unemployed.
15 That's a number we have to change. There's a story
16 of a gentleman named Mr. Taylor. He is in his late
17 40's. He's lived in New York for many years. He's a
18 skilled construction worker. Both before and during
19 his years in prison he acquired substantial skills
20 and experiences in construction. He's now a
21 certified Iron worker, having completed an apprentice
22 program in 1985. He has certificates and licenses in
23 steel erection, crane signaling, and rig operation,
24 but since his release in 2011, he completed a 30 hour
25

1 OSHA training. He's a problem-solver. He's a team
2 player. He's pro-active, and he's an ideal job
3 candidate. Unfortunately, New York City lost this
4 ideal construction worker to Newark, New Jersey,
5 because this East Harlem resident was not able to
6 find a job in New York. It's not for lack of trying.
7 He worked with a job placement coach at Exodus
8 Transitional Community, which you know is a re-entry
9 support nonprofit. He participated in a 10 week
10 intensive training that equipped him with job search
11 skills. He joined a union and went to multiple
12 construction sites to look for a job. He even started
13 applying for administrative positions, but he was not
14 able to get back on his feet. So, by the end of the
15 day he has to compete with hundreds of workers who do
16 not have a criminal record, and he relocated to New
17 Jersey, where in August of this year, the state
18 became one of the latest jurisdictions to adopt
19 similar legislation to the Act before us today. When
20 he moved, he wasn't sure if he would be able to find
21 a job right away, but he believed that the new law in
22 New Jersey would open doors to people like him. It's
23 a very bad indictment on our city, and we have to
24 change it, and that's why we're here today. So the
25

1 city has the opportunity to keep skilled workers in
2 New York by passing this law, Fair Chance Act. New
3 York's biggest employer, as you know, the city of New
4 York essentially does this. We all heard earlier
5 about Executive Order 151, which was issued in August
6 2011 by former Mayor Bloomberg, and as we know, it
7 prohibits city agencies, at least some of them, and
8 human service contractors from asking if the job
9 applicant has been convicted of a crime until after
10 the first interview. And just to pick up on what
11 Council Member Johnson was asking, since implementing
12 Executive Order 151, the percentage of city new hires
13 with criminal records nearly doubled between the end
14 of 2012 and the end of 2013. It went from 11.9
15 percent to 23.4 percent according to folks from DCAS.
16 The increase in the highest among job seekers under
17 the Work Experience Program, WEP, that's mostly where
18 that increase came from. And that as we know helps
19 many New Yorkers, including those with criminal
20 records to secure jobs. So I'd like to emphasize
21 that both Executive Order 151 and the Act before us,
22 the Fair Chance Act, are meant to expand the chance
23 of employment for workers who are already qualified
24 for the positions they apply for. The city hired
25

1 23.4 percent of candidates with criminal records
2 because they could do the job. Private employers, in
3 the same similar situation do not have to consider
4 unqualified job candidates under the Fair Chance Act,
5 because each company's regular hiring process already
6 has protocols in place to screen out those who don't
7 qualify. What the act does is to level the playing
8 field, so those with a criminal record can be
9 considered for position among those who are also
10 equally qualified candidates. The bottom line is a
11 level playing field. So as Mr. Taylor's example
12 shows, admit awful [sic]--also often requires skills
13 that are desirable to employers will incarcerated.
14 Many complete GED's, bachelors, master's degree while
15 on the inside. Some become experienced food handlers,
16 learn carpentry, work with clinical aids inside rehab
17 centers with partnership from state agencies.
18 They're enrolled in the New York Theological
19 Seminary's Master of Professional Studies, which had
20 a big article in the Times recently. It's a program
21 out of Sin-sin [sic]. They gain many experiences by
22 organizing food drives, and they work on with many
23 potential employers to develop competitive market
24 skills. These are all things that people coming out
25

1 have the skills. They don't need to check a box.
2 So, over the past few weeks, with Council Member
3 Williams and with Paul Keefer [sp?] we have met and
4 spoken with members of the New York City business
5 communities. We've talked to businesses in the Bronx,
6 in Brooklyn, Queens and Staten Island, all the
7 chambers of commerce. I know that the Manhattan
8 chamber is represented well today, and we will be
9 meeting with them. We've talked to the Caribbean-
10 American Chamber of Commerce and Industry,
11 Partnership for New York City, The Haitian-American
12 Business Network and business owners. I can honestly
13 say, because I was at almost all of these meetings,
14 that none of the business stakeholder's objective to
15 the intent of the bill, because they too believe in
16 giving anyone with a criminal record a fair chance.
17 The concerns from the business community are mostly
18 centered around expediency and potential legal
19 liability. I around these concerns. Yet, I will say
20 that the Fair Chance Act does not impose a burden of
21 paperwork or the need to re-interview a new pool of
22 candidates as long as an employer decides to hire the
23 candidates that best fit the job and ones that he or
24 she can work with. As for concerns for increased
25

1 legal liability, if the nature of the job does indeed
2 prevent an employer from hiring the candidate with a
3 criminal record and the written explanation required
4 under this act will in fact function as a safeguard
5 against legal action. Since the explanation will
6 clarify the reasons for re-drawing the offer and
7 demonstrate the denial has nothing to do with the
8 fact the person has a record, the denial is not due
9 to discrimination. Additionally, I've reached out to
10 San Francisco and both the state of Massachusetts and
11 the city of Boston to find out how implementation of
12 their respective Fair Chance policies are faring. We
13 wanted to learn from Boston's experience in
14 particular because the law that Boston implemented in
15 2006 is very similar to our Fair Chance Act, bans the
16 box, no criminal history inquiries until after a
17 conditional offer is made, and the look-back period
18 is the same at what we're proposing today. We spoke
19 with enforcement agencies, chambers of commerce,
20 business associations, research institutions and
21 advocacy groups. We learned two key lessons from the
22 other jurisdictions. Number one, both San Francisco
23 and Massachusetts in their business communities they
24 expressed the same concerns when their respective
25

1 version of the Fair Chance Act was first proposed,
2 but two, once implemented none of the enforcement
3 officers, the chamber leaders or research specialists
4 we interviewed had received any opposition from
5 businesses that had implemented their Fair Chance
6 Laws. In fact, the greatest concern expressed in
7 Massachusetts among the business community was the
8 desire for more outreach and education, and that is
9 always important. This law would demand a lot of
10 outreach and education, similar to what--you're going
11 to laugh--the Mayor's Office is doing on paid sick
12 days. I'm afraid to even bring it up. This education
13 is absolutely needed. This sentiment was expressed
14 to my staff when we reached out to the Greater Boston
15 Chamber and the Retailer's Association of
16 Massachusetts. They just want to make sure there's a
17 lot of education. Extensive outreach and education
18 is something that I'm committed to providing as I'm
19 sure we all are, and we will work to do that. Thank
20 you again for the opportunity to testify before you.
21 I am honored to have worked with Council Member
22 Williams and all of you to make sure that people have
23 a fair chance, and that's what Intro 318 would do.
24 Thank you very much for this opportunity.
25

1
2 CHAIRPERSON MEALY: Thank you, our
3 Borough President. Some of my colleagues have
4 questions for you. Jumaane, then Daneek Miller.
5 We've been joined by Daneek Miller, our Councilwoman
6 Debbie Rose of Staten Island.

7 COUNCIL MEMBER WILLIAMS: Thank you,
8 Madam Chair. Thank you, Madam Borough President.
9 It's been an honor to work with you on this. I'm
10 happy to have taken your leadership from you having
11 had this bill before I was a Council Member, and I
12 appreciate having it now. So, thank you for your
13 leadership on this. Really quickly, I just wanted to
14 mention, repeat something that you wrote in your
15 testimony, that you learned to key lessons from other
16 jurisdictions. Both San Francisco and Massachusetts
17 business communities express the same concerns with
18 their version, but once implemented, none of the
19 enforcement officer, the chamber leaders or research
20 specialists you interviewed had received any
21 opposition from businesses against their localities'
22 Fair Chance Laws. I just wanted to make sure that
23 was repeated. Because--

24 GALE BREWER: [interposing] Thank you.
25

1
2 COUNCIL MEMBER WILLIAMS: I believe it's
3 very important to know that people had those concerns
4 in other jurisdictions and it just never really came
5 to fruition.

6 GALE BREWER: Thank you very much. It is
7 pleasure to work with you Council Member Williams.

8 COUNCIL MEMBER WILLIAMS: Did you--I just
9 wanted to see if you had any response to anything
10 that you heard from the Administration?

11 GALE BREWER: No, I answered a little bit
12 in terms of the DCAS numbers. I gave those in terms
13 of the immense numbers of persons hired. It's a
14 wonderful statistic. Eleven percent to 23 percent of
15 city employees hired with criminal records, and
16 they're doing a great job. So that's a wonderful
17 answer to Council Member Johnson's questions earlier.

18 COUNCIL MEMBER WILLIAMS: Thank you. And
19 I neglected to thank my staff, Nick Smith and William
20 Gurlick [sp?], and I also want to make sure--and you
21 mentioned, this was just my mishap. We should
22 definitely shout out Paul Keefe [sp?] from Community
23 Services Society--

24 GALE BREWER: [interposing] I mentioned
25 him.

1
2 COUNCIL MEMBER WILLIAMS: the Senior
3 Staff Attorney. He's in the audience. He's been
4 fantastic and critical to getting us to this point
5 and meeting with all those business leaders and
6 chambers of commerce to answer any questions they may
7 have. So I just want to thank Paul publicly.

8 GALE BREWER: And also Howie Chu [sp?]
9 from our office has been phenomenal.

10 CHAIRPERSON MEALY: Thank you. We have
11 Daneek Miller.

12 GALE BREWER: Good morning.

13 COUNCIL MEMBER MILLER: Good morning.
14 Thank you, Madam Chair, and thank you Madam Borough
15 President for all your dynamic work on this very,
16 very, very important issue, and my colleague in front
17 of me. You know, I'm going to put my notes like this
18 when you're sitting next to Jumaane, because that's
19 how it is, but as a lifelong--

20 GALE BREWER: [interposing] I know what
21 it's like to sit next to Jumaane.

22 COUNCIL MEMBER MILLER: Exactly, right?
23 But as a lifelong civil servant, you so aptly
24 articulated the value of public employees, those who
25 policy aren't applicable to such draconian background

1 checks and so forth, and that 11 percent of that
2 workforce actually have criminal records, and so that
3 was my question to you was about those numbers and
4 the performance of those individuals who have been
5 allowed employment because of the--

7 GALE BREWER: [interposing] The city's
8 numbers are really good.

9 COUNCIL MEMBER MILLER: in spite of--yes.
10 And so was this a consideration in preparing this
11 legislation? We were able to use these numbers to
12 demonstrate how people are able to perform when given
13 an opportunity?

14 GALE BREWER: Yes, I think it definitely
15 helps. The Executive Order gives us a road map and
16 so do the many cities and states across the United
17 States that have already implemented. I indicated
18 earlier that New Jersey has a similar bill, and
19 unfortunately, some people have gone there to look
20 for work who have the qualifications to work in our
21 city, because they are not asked to check the box.

22 COUNCIL MEMBER MILLER: I just want to
23 again thank you for your leadership, Madam Chair and
24 Council Member Williams and the rest of the prime
25 sponsors on this legislation. It is so important

1 that we get this right and that we provide
2 opportunities for everyone, but more importantly that
3 we don't continue to create this underbelly of low
4 wage workers because of circumstance that people
5 aren't exploiting and taking advantage of
6 circumstances and not hiring qualified people because
7 they can hire others for less, and we want to remove
8 that excuse and that stigma from this. So, thank you
9 again. Thanks to all my colleagues for this.
10

11 GALE BREWER: Thank you very much. Thank
12 you, Madam Chair.

13 CHAIRPERSON MEALY: Thank you. We have
14 one more. Council Member Torres?

15 GALE BREWER: He spoke very well at the
16 press conference today, Mr. Torres.

17 COUNCIL MEMBER TORRES: Thank you. First
18 of all, I want to thank you for your leadership and I
19 know your work ethic is so legendary that even
20 professional Council Members who never served with
21 you are well aware of it.

22 GALE BREWER: Thank you.

23 COUNCIL MEMBER TORRES: But I want to ask
24 the same question that I posed to the Counsel
25 earlier. You know, suppose for a moment I were in

1
2 Congress and I was looking to implement ban the box
3 nationwide, I'm wondering if there is a gold standard
4 that could be--

5 GALE BREWER: [interposing] Well, I mean,
6 my understanding, and I was listening carefully, is
7 that there are already a lot of--you know, the person
8 to really ask this to is Paul Keefe when he comes up
9 and testifies. There are already a lot of exemptions
10 on state and federal. So, I would also advocate that
11 we don't need to sort of open up Pandora's Box, so to
12 speak. That would be my suggestion. So, obviously,
13 I'm, you know, we'll go back and forth in the
14 negotiations, but the state of New York, I've thought
15 about--you know, it's already against the law to
16 discriminate based on a record. So the question is
17 how do you just take what exists and amplify it,
18 which is what I think this law does without opening
19 up other exemptions. So I think that's something to
20 be discussed. That would be my perspective. There's
21 a long list in the state and federal law already.

22 COUNCIL MEMBER TORRES: No, I agree with
23 you. It seems to--

24

25

1
2 GALE BREWER: [interposing] I'm a little
3 confused about what else could be added. So I think
4 that's the discussion we need to have.

5 COUNCIL MEMBER TORRES: And I felt like
6 there was more trepidation on the part of the
7 Administration, because it seems to me the exemptions
8 and state and federal law might be sufficient. I'm
9 always open to hearing concerns from the business
10 community.

11 GALE BREWER: Exactly, but my
12 understanding is there a lot. Obviously, education,
13 law enforcement would be the two that already exist.

14 COUNCIL MEMBER TORRES: And to the extent
15 that ban the box might vary from municipality to
16 municipality it's because some of those versions
17 might be watered down. So, but thank you so much for
18 your leadership and everything. And actually, I want
19 to add one more component. I think it's just
20 something that has to be mentioned is, I guess for a
21 lack of a better--the mental health component. You
22 know, I can only imagine what it's like to apply for
23 a job and work your heart out to apply again and
24 again and again for a job that will never--

1
2 GALE BREWER: [interposing] I know the
3 other issue is I know people who have worked in the
4 job for a year, and then, you know, this background
5 check costs money. You don't just--

6 CHAIRPERSON MEALY: [interposing] Right.

7 GALE BREWER: wake up one morning and say
8 we're going to have a background check. So it cost
9 money, so not a lot of businesses do it, or they
10 might do it further on when it's appropriate, and
11 then you get fired. So, it's not only the mental
12 health issue of getting rejected, it's the mental
13 health of being a high quality employee and then
14 getting fired because of this box when you have no
15 relationship to the job and the past. So there are--
16 I think this is something that, hopefully 318 will
17 address. As you know, I'm a big proponent of quality
18 mental health, and I would love to see this as
19 something that would add to the quality mental health
20 of so many of our residents, absolutely.

21 COUNCIL MEMBER TORRES: Yeah, and you're
22 going to--yeah, I appreciate it. I think that's
23 something, you know, just the depressing and
24 demoralizing effects of--

1
2 GALE BREWER: [interposing] I'm sure
3 you'll hear about it from people who testify.

4 COUNCIL MEMBER TORRES: And I look forward
5 to hearing from them. Thank you so much for your
6 leadership.

7 GALE BREWER: Thank you. Thank you, Madam
8 Chair.

9 CHAIRPERSON MEALY: And Borough
10 President, I just want to thank you and Jumaane for
11 sitting down with me and really explaining--

12 GALE BREWER: [interposing] Thank you very
13 much.

14 CHAIRPERSON MEALY: everything. I
15 appreciate it. Thank you.

16 GALE BREWER: Thank you.

17 CHAIRPERSON MEALY: We're going to have
18 our next panel, and I hate to say that we're going to
19 limit it to three minutes. Could I have Paul Kalief
20 [sic], Keefe, Amy Hong and Robert Newman and Jackson
21 Rockingster, Tsedeye, National Employment Law
22 Project, Angel Gairrido. You may start. Sergeant at
23 Arms, thank you so much. Paul Keefe?

24 PAUL KEEFE: So, good morning. My name
25 is Paul Keefe. I'm a Senior Staff Attorney at the

1
2 Community Service Society. I've worked on employment
3 discrimination against people with criminal records
4 for about seven years.

5 CHAIRPERSON MEALY: Could you push the mic
6 closer. I want to hear everything.

7 PAUL KEEFE: And at Community Service
8 Society we see a lot of the issues that we're talking
9 about here today. We talk with people who are
10 applying for jobs and they're not able to get them.
11 They feel that as soon as they check the box they're
12 not going to get a call back, and that kind of
13 occurrence is born out by the sociological research
14 that was talked about earlier where someone with a
15 criminal record is only half as likely to get a call
16 back than someone without. For African-American
17 applicants, that likelihood is reduced to one-third.
18 But that same research show that having an interview
19 is a great way to erase employer's stereotypes about
20 someone with a criminal record, and so that's what
21 the Fair Chance Act tries to accomplish. It creates
22 a space where if an employer is going to use a
23 background check against someone, they have to give
24 them a copy of what they're looking at. They have to
25 explain why they're not going to hire the person, and

1 they have to hold the job open for seven days. Now,
2 they only have to do that if they're going to use the
3 background check against someone. If they are going
4 to hire the person, if they do the background check
5 and it's fine, they're fine with the person's record,
6 they don't have to do anything else. It's only when
7 they're going to use the background check against
8 someone that they have to go through this extra
9 process. So the law is very careful to just limit
10 the burden on employers about what they have to, and
11 that matches what most employers do already. Sixty
12 percent already wait until conditional offer before
13 running a background check, and it really puts the
14 employee in the best position possible, because
15 they've been selected among a pool of other
16 candidates for their skills and qualifications, and
17 so the employer really has to weigh all of that
18 against what they see on the record rather than just
19 viewing the person as their record and writing them
20 off after that. I think we have to be careful when
21 we talk about exemptions, because what you're saying
22 is there is some jobs that are so serious that we can
23 just look at your record and not look at anything
24 about you as a person and the evidence of

1 rehabilitation that you have and decide that you're
2 not qualified for this job. That's not what the
3 state law requires. State law requires you to
4 consider how old the conviction was, the person's age
5 at the time, evidence of rehabilitation, a series of
6 factors, and so we have to be careful inviting
7 exemptions into this law. The other thing that the
8 Fair Chance Act does that will really help the
9 clients that we see, and we see about 500 a year, is
10 there's a real sense of frustration out there as when
11 am I going to have to stop being burdened by my
12 record? When is it going to be, a point in time
13 going to come when I don't have to worry about the
14 felony that I committed 10 years ago, the misdemeanor
15 that's seven years ago? And that's the other thing
16 that this law addresses. It says that it's illegal
17 to consider those convictions after a certain amount
18 of time has passed. That extends state law and it's
19 matched by recidivism research which shows that
20 there's a time period after which someone with a
21 criminal record has no really likelihood of
22 committing a crime than someone without. So, I'll
23 just end by saying that the Fair Chance Act focuses
24 on those jobs where employers have discretion. It
25

1
2 doesn't cover those jobs where a law says you can't
3 hire the person because of their record, but we know
4 a discretion invites discrimination, and so what we
5 want to do is put the person in the best position
6 possible when they're applying for employment. Thank
7 you.

8 CHAIRPERSON MEALY: Thank you. I have
9 one question. And you press the button.

10 AMY HONG: Okay, thank you. Good
11 morning. My name is Amy Hong, and I'm a Staff
12 Attorney with The Employment Law Unit at the Legal
13 Aid Society Civil Practice where I represent low wage
14 workers and their legal claims against their current
15 or former employers. My colleague here, Robert
16 Newman is a Staff Attorney with the Legal Aid Society
17 Criminal Practice where he advises attorneys and
18 their clients of the often unintended hidden
19 consequences that flow from arrests and convictions.
20 We appreciate the opportunity to come before you
21 today in support of City Council Intro 318, the Fair
22 Chance Act, which builds upon existing state and city
23 laws meant to prevent unfair job discrimination
24 against the hundreds of thousands of New Yorkers who
25 encounter the criminal justice system each and every

1 year. These new rules are necessary because the
2 existing prohibitions against job discrimination by
3 reason of criminal history have proven difficult to
4 enforce. If any employer is permitted to ask for an
5 applicant's criminal record out the outset of the
6 application process, the employer may and usually
7 will reject the applicant with a criminal record
8 without giving a meaningful reason, despite the
9 applicant's qualifications. It is often difficult to
10 prove that the criminal history as the reason for
11 rejection. Likewise, it is difficult to determine
12 whether the employer made a good faith effort to
13 evaluate the factors that state law requires it to
14 evaluate under Article 23A of the correction law. Ban
15 the box is necessary to ensure that employers truly
16 obey the legal mandate to offer equal opportunity to
17 persons with criminal records unless there is a
18 genuine relationship between the job duties in
19 question, or it would unreasonably endanger the
20 public interest to hire the applicant. The provision
21 requiring employers to hold a job open until the
22 applicant has a chance to explain why his criminal
23 record should not disqualify him is a critical part
24 of the bill. Legal Aid's employment lawyers have
25

1 succeeded in representing clients by arguing that an
2 applicant was qualified in spite of an arrest or
3 conviction history only to be told that the job was
4 gone because someone else had been hired in his place
5 or a civil service list expired, thereby further
6 delaying the client's re-entry into the workforce.

7 Seven days is a modest and reasonable length of time
8 to afford the applicant a chance to explain the
9 circumstances of his criminal record to the employer
10 or explain the background check if it was erroneous
11 or that the application has overcome addiction or
12 illness that led to his criminal justice involvement.

13 As you have heard, the Fair Chance Act also
14 establishes a new rule that once 10 years have passed
15 since the applicant was sentenced or released from
16 prison, whichever is later, after a felony conviction
17 or five years have passed after a misdemeanor
18 conviction, that conviction is to be disregarded in
19 evaluating the application's qualification for
20 employment or licensing. The new rule will not only
21 simply the application of the law by creating a
22 bright line rule, it will also ensure that persons
23 who have committed indiscretions or mistake well in
24

1
2 the past will not have the records held against them
3 for life. Thank you, your honor. Thanks.

4 CHAIRPERSON MEALY: Thank you. Mr.
5 Robert?

6 ROBERT NEWMAN: If I may continue?

7 CHAIRPERSON MEALY: Yes, you may.

8 ROBERT NEWMAN: Okay. I mean, another
9 valuable provision of the intro is that it will not
10 only protect applicants from employment who have
11 arrest histories, it will extend the protection to
12 persons who are arrested while currently employed.
13 It wouldn't prohibit firings or discipline if an
14 employee is convicted of a crime, but it would
15 require employers to use the same careful analysis in
16 deciding whether someone should be fired, that the
17 law already requires with respect to new applicants.
18 Unionized and civil service employers already have
19 contractual or legal protection against arbitrary
20 firings. The lower paid struggling workers that we
21 typically represent deserve such protections also.
22 We've seen too many workers who lose their jobs
23 automatically, forcing them to start over in a
24 difficult job market because of relatively minor
25 offenses that had nothing to do with the job and

1 don't fairly reflect on the worker's ability to
2 continue working competently and honestly. This is
3 extremely disruptive to our client's lives, and the
4 loss of a job also leads to the loss of other basic
5 needs such as housing. And I do--and without going
6 into detail, but it's in the written, make an
7 additional suggestion for an amendment or an
8 additional bill that will also allow people whose
9 criminal cases are adjourned in contemplation of
10 dismissal, they're not even convicted, to get their
11 jobs back without waiting the six or 12 months until
12 that adjournment formerly becomes a dismissal. Thank
13 you.
14

15 CHAIRPERSON MEALY: Thank you. Do you
16 have someone else?

17 TSEDEYE GEBRESELASSIE: Hi, good morning.
18 My name is Tsedeye Gebreselassie. I'm a Staff
19 Attorney at the National Employment Law Project. We
20 work on the local, state and federal level to develop
21 worker's rights policies including a lot of the Fair
22 Chance hiring reforms that we've been talking about
23 this morning. You know, we estimate that there are
24 about 70 million people in this country that have an
25 arrest or a conviction record, which is a staggering

1 number, and in New York it's about one in three
2 adults. So the City Council today and this fall has
3 a real opportunity to reduce barriers to employment
4 for millions of adults in this state that are just
5 struggling to make ends meet. That's because the box
6 serves no purpose. It has a chilling effect because
7 it discourages people from applying for the job in
8 the first instance. It artificially narrows the
9 applicant pool of qualified workers, when employers
10 just simply toss out people that have checked the
11 box, and that means that both employers and
12 applicants lose out. For applicants, there's
13 research that shows that having a criminal record
14 reduces a call-back by 50 percent, which means that
15 checking the box essentially means that you're
16 marking yourself with a modern day scarlet letter.
17 You know, we work on the national level. About 15
18 years ago, Hawaii became the first state to adopt
19 this type of Fair Chance hiring reform. Now we've
20 seen 13 states and actually almost 90 localities at
21 this point. I know the number 70 was floated around,
22 but it just keeps growing. We can't even keep track
23 of how many localities are doing this. Six states and
24 about a dozen localities have extended to private
25

1 employers, which is key, which is why it's great that
2 the New York proposal would do that too. Paul talked
3 about the importance of the look-back provision, so
4 I'm not going to go into that except to say that, you
5 know, there's really nothing to be gained for the
6 employer, research shows, of having somebody identify
7 a very long ago conviction or arrest, but if it's
8 disclosed it carries a real stigma for the worker.
9 That makes it--that's very challenging to overcome.
10 So, I'll just--given that time is short and everybody
11 would like to testify, I'll conclude there, but I'll
12 say that, you know, it's total common sense policy,
13 but really New York City being a leader in this
14 movement will have serious repercussions for the
15 national movement for Fair Chance hiring reform.
16 There are 13 states and 90 localities, but we want to
17 get all 50 states and, you know, as many localities
18 as we can to adopt this really key policy reform.
19 Thank you.

21 CHAIRPERSON MEALY: Thank you. I have
22 some questions with Ms. Hong. How do you think--no,
23 we only had four.

24 [off mic]

25 CHAIRPERSON MEALY: Did you provide--

1
2 ROBERT NEWMAN: Yeah, his testimony is
3 attached to ours.

4 CHAIRPERSON MEALY: Oh, okay.

5 AMY HONG: His name is Wayne Speed.

6 CHAIRPERSON MEALY: He's not here. State
7 your name for the record?

8 JACKSON ROCKINGSTER: Jackson
9 Rockingster. I may proceed?

10 CHAIRPERSON MEALY: You may.

11 JACKSON ROCKINGSTER: Good morning.

12 CHAIRPERSON MEALY: Good morning.

13 JACKSON ROCKINGSTER: I'm President of
14 HABNET Chamber of Commerce, representing
15 approximately 200 small business owners. I'm also
16 the Vice Chair of the Flatbush-Nostrand Junction
17 Business Improvement District. Real fast, what we do
18 at HABNET is we support and promote entrepreneurship,
19 civic engagement, job development, financial literacy
20 and business education. And I'm here to testify that
21 we overwhelmingly support the bill 318, the Fair
22 Chance Act, for a number of reasons. For the small
23 business owners, the bill is in their best interest.
24 What it does is it creates a pool of applicants that
25 would otherwise not have access to, potentially a

1 pool of qualified applicants, and that's good for
2 them. Secondly, a lot of these small business owners
3 are people of color, so they do understand the fact,
4 they do understand the reality. They do understand
5 the judicial systems that aren't necessarily always
6 fair or that it was always applied appropriately.
7 So, for that reason they are very sensitive to a
8 person who has a record to that plight. They
9 understand and they appreciate it, and they do, and
10 they are sensitive. And secondly, each person is
11 gainfully employed. It is very important. Each
12 person who is gainfully employed who is not on the
13 unemployment line creates what you call a multiplier
14 effect that contributes to the overall circle of flow
15 of economic activity. In other words, this person
16 has disposable income to spend. He goes to the
17 vendor, and the vendor in turn has more disposable
18 income. This person pays taxes. Again, it's a
19 circle of flow of economic activity that's really
20 good for the whole society, and even for this reason
21 alone we should really consider it. And lastly, no
22 one should be continuously punished for one, sometime
23 many often youthful indiscretion. They paid their
24 dues to society. They should have the opportunity to
25

1
2 have equal access. They should have the opportunity
3 to have good jobs, and so on and so forth, basically
4 live the American dream. Thank you so much.

5 CHAIRPERSON MEALY: Thank you. Who did
6 you say was with you, sir?

7 AMY HONG: We have a client. His name is
8 Wayne Speed, and he's right here. His testimony is
9 attached to our written testimony, and you know, we
10 asked him to come to testify today in support of the
11 bill about his personal experience as a victim of
12 discrimination.

13 CHAIRPERSON MEALY: Sir, did we call you
14 to the table? No, I'm talking about the young man
15 here. What's his name? Excuse me?

16 ANGEL GAIRRIDO: Angel Gairrido.

17 CHAIRPERSON MEALY: Right, okay. Yes,
18 you can testify now.

19 ANGEL GAIRRIDO: I need to turn it on.
20 It's on already. Good morning, rather good af--yeah,
21 good morning. My name is Angel Gairrido. I am here
22 as the Director of Programs and Public Relations for
23 Inner City Tech. ICT is a nonprofit organization
24 that is in the prelaunch phase. We expect to be
25 operational by next year. In this role, I will help

1 ITC students develop world of work skills that will
2 assist them in finding employment. I would like to
3 thank the Council for the opportunity to testify. I
4 hope that my testimony will inspire you to give
5 people like me and thousands of others a fair chance
6 of securing employment. About one out four adults
7 have some type of criminal record. I represent the
8 voices of the people that are often discriminated
9 against just because of a mistake that they made in
10 their past. I am here today because I was 18 years
11 old, my brother who was only 14 years old at the time
12 was stabbed 24 times with a ice pick and a
13 screwdriver, broken jaw and shot in the chest at
14 point blank range. This horrific act was carried by
15 a gang of 12 men right outside my apartment. The
16 gang members that did this to my brother were not
17 satisfied and proceeded to threaten the lives of my
18 wife, my newborn son and my other younger brother
19 Ritchie and his wife Miriam Gonzales. I was young,
20 afraid for my family. The odds were stacked against
21 me, so I did everything in my power to protect my
22 family. I would spend the next 20 years in prison.
23 There is no question in my mind that if I had to do
24

1
2 it over again I would take my family and run. I lost
3 everything. When my sentence was handed down--

4 CHAIRPERSON MEALY: Take your time.

5 ANGEL GAIRRIDO: My younger brother--I'm
6 sorry. When my sentence was handed down, my brother--
7 I lost everything and when my sentence was handed
8 down, my younger brother Ritchie lived by the grace
9 of God, but my wife left me, my children grew up
10 without a father. While in prison I picked up the
11 pieces of my life and I began to rebuild myself. I
12 began to organize incarcerated prisoners.

13 CHAIRPERSON MEALY: Go ahead.

14 ANGEL GAIRRIDO: I began to organize
15 incarcerated people to demand better education where
16 they reside in. In Attica, Auburn, Clinton, Elmira,
17 Great Meadow, Shawangunk, Sing Sing state prisons my
18 peers saw me as a leader and elected me as Vice
19 President of the Latino Unidos Organization, and
20 later I would be re-elected as President. In
21 addition, I became intimately involved with the
22 Restorative to Justice Foundation Project, which in
23 theory emphasized repairing the harm caused through a
24 cooperative process that includes all stakeholders.
25 Upon leaving the prison system I had a slim to none

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

chance of finding gainful employment with my type of record. I was left to my own wits--

CHAIRPERSON MEALY: Going to have to start wrapping up.

ANGEL GAIRRIDO: and sheer determination and luck. In 2002 I asked my parole officer, Mr. Roche [sp?] for assistance. He introduced me to and individual from Strive, a recruiter and I began the job readiness training and attitudinal training classes. On August 2nd, I graduated from Strive. I began working with--

CHAIRPERSON MEALY: [interposing] Sir, you're going to have start wrapping it up.

ANGEL GAIRRIDO: Okay. So, long story short, I started at Strive 2002. Left March 4th, 2005. Went to Sheldon and Farrington [sic], worked for them, a company that does not hire ex-offenders, worked for them for six months, executed my goal and they kept me for two and a half years. Strive called me back and wanted to work, and ever since 2000, October 25th, 2011--

CHAIRPERSON MEALY: No work.

ANGEL GAIRRIDO: No work.

1
2 CHAIRPERSON MEALY: I understand. We all
3 understand. I want to thank everyone for their
4 testimony also, but I just have--I know I want Mr.
5 Smart [sic], Wayne Speed to come up, but I have a
6 question for Ms. Hong. How do you think you or your
7 clients would be able to prove that an employer made
8 an inquiry related to criminal background before a
9 conditional offer has been made?

10 AMY HONG: Well, if Intro 318 was passed,
11 our client would be protect and the inquiry wouldn't
12 be made until after the conditional offer of
13 employment is made. So, our clients would be
14 evaluated in the application process based on their
15 skills and expertise and on their qualifications as
16 opposed to because they have a criminal background.
17 So, I think the--you know, and Mr. Speed [sic] will
18 be able to testify about his personal experience in
19 that, but the inquiry, you know, our clients would be
20 protected in that way, and that's where this
21 legislation would be wonderful for our clients.

22 CHAIRPERSON MEALY: Okay. I want to
23 thank you. You two can stay here on the table and
24 let Mr. Speed come up. Now, do you have any
25

1
2 questions? One second please. My colleagues have a
3 question.

4 COUNCIL MEMBER WILLIAMS: Oh, sorry.
5 Thank you, Madam Chair. I do want to just make
6 mention of Jackson Rockingster and Bob Newman,
7 sometimes confused with the Rob Newman here, but they
8 are both constituents of mine and I want to thank you
9 for coming out and making statements, and thank you
10 HABNET for, shouldn't be courageous, but thank you
11 for being and representing the Chamber of Commerce
12 and still supporting, and thank you, sir, for your
13 testimony and your courage in sharing that with us
14 and making sure that there is a face and a human
15 being behind sometimes in numbers that people point
16 out. Paul, I did want to ask you a couple questions.
17 If you can respond a little bit to the pre-emption
18 that was talked about and is there a difference
19 between 23A and is there a difference between 23A and
20 being in the correction code, and what we're
21 proposing in being the human rights code and why you
22 think that pre-emption doesn't exist?

23 PAUL KEEFE: It doesn't exist for a
24 couple of reasons. The first is that the legislature
25 in pre-empting a field of law has to really indicate

1 that that's what they're trying to do, and they
2 indicate that either by saying that that's what
3 they're trying to do or by creating a legal and
4 regulatory process that's so detailed that there's
5 really no room for local intervention. And so where
6 that has been found has been with like the alcohol
7 and beverage control law which is a very detailed
8 statute. Certain environmental control statutes also
9 very detailed about where you can site a power plant
10 and things like that. When Article 23 was passed in
11 1976, the Governor in his signing statement said,
12 "This law is just to create reasonable standards to
13 be applied to people who have past criminal records
14 where none currently exist." So that's the intent of
15 the law, just to provide some standards for an
16 employer to use when they're considering whether to
17 hire someone. It's not--there's no intent to pre-
18 empt the field. That's not a very strong statement.
19 Secondly, the city human rights law protects things
20 that the state doesn't. For example, it protects
21 discrimination based upon sexual orientation where
22 the state doesn't. So the city can go farther. What
23 we really see here is that there is not the sort of
24 intent either in the language of the correction law
25

1
2 or in its detail where courts have found that the
3 legislature intended to pre-empt the field. New York
4 City in the past has been allowed to go farther than
5 the state, and I believe that we can do so here.

6 COUNCIL MEMBER WILLIAMS: Thank you. And
7 just again, explain what you believe would be the
8 dangers in going too far with exemptions.

9 PAUL KEEFE: So, if--what the Fair Chance
10 Act is intended to do is create a fair process for
11 people when they're applying for work, and so
12 everyone is in the same position until a job offer,
13 until one of the people who is being considered for
14 the job is chosen, and at that point, the background
15 check can be done. And what the law is intended to
16 is if the employer's going to use the background
17 check against the person and consider not hiring them
18 because of their record, they have to give them a
19 copy of the background check explanation why and
20 seven days to respond. If certain employers are
21 exempted from that process, what you're essentially
22 saying is that for some jobs we can just look at what
23 the record of the person is without anything else
24 about who they are and the progress that they've made
25 and just say that those jobs are off limits. The

1
2 other thing is there, as has been mentioned before,
3 is there's plenty of state and federal law that
4 already prohibit people with sort of the nightmare
5 scenarios that everyone wants to bring up from
6 employing people with certain records. And lastly,
7 as Council Member said at the very beginning, the
8 Fair Chance Act doesn't prevent employers from not
9 hiring someone because of their record. If they can
10 show a direct relationship exists, then they're still
11 free to deny employment to that person. And so when
12 you talk about--employers can sort of get out from
13 under this law if they can show a direct relationship
14 and reasonable risk. It's not that they're forced to
15 hire someone. And so the idea that there needs to be
16 some exemptions doesn't really make sense when
17 employers are able to refuse employment to people who
18 have convictions that are directly related currently.

19 COUNCIL MEMBER WILLIAMS: Can you--I
20 mean, would it make sense if there may be some jobs
21 that are logistically difficult to ask it at that
22 point in time, or do you think that argument doesn't
23 hold much water, basically, yeah?

24 PAUL KEEFE: For most jobs, I don't think
25 that that holds much water, and again, the delay, the

1
2 seven day time period, is only if they're using the
3 record against the person, and that is an opportunity
4 for the employer and the employee to come to an
5 agreement about whether the person should hold that
6 job. Perhaps they should have a different job in the
7 same company and work to the point where they could
8 be in a more trusted position, but what we want to
9 create with this law is a conversation so employers
10 start to recognize people based upon their
11 qualifications and their progress, not just based
12 upon their record.

13 COUNCIL MEMBER WILLIAMS: Mr.
14 Rockingster, do you think this would have any
15 impediment to your member's hiring process?

16 JACKSON ROCKINGSTER: Impediment?

17 COUNCIL MEMBER WILLIAMS: The issues that
18 were brought up in terms of possible impediments to
19 when the question is asked, holding it open, do you
20 think that would be any impediment to your members?

21 JACKSON ROCKINGSTER: I don't believe so.
22 As I mentioned before, we are in a different kind of
23 circumstance because a lot of the small business
24 owners I represent happen to be people of color and
25 they're more sensitive to the plight of someone for

1 record and they understand much better. So they are
2 more inclined to give this person a chance to hire
3 him or her.

4 COUNCIL MEMBER WILLIAMS: Okay. Thank
5 you. Thank you, Madam Chair, and thank you all for
6 your testimony.

7 CHAIRPERSON MEALY: Thank you all for
8 your testimonies, and I will have--oh, Torres, I
9 apologize. Torres?

10 COUNCIL MEMBER TORRES: Thank you. I'm
11 just curious to know these exemptions under federal
12 and state law are sufficient or?

13 ROBERT NEWMAN: Yes, I would like to ask
14 along with Councilman--Borough President Brewer, I
15 believe, that particularly that you not add broad
16 exemptions for the healthcare and education fields.
17 These are among the fast growing, fastest growing
18 fields of employment that are open to people, and
19 it's really important that the people we're trying to
20 help be able to work in these fields. And the public
21 interest is adequately protected by state laws which
22 require that for jobs like teaching, dealing with
23 children and other vulnerable populations, certain
24 state licenses are required. A person unable to get
25

1
2 those licenses by reason of poor moral character
3 according to the licensing agency or a criminal
4 record will not be able to get the job because the
5 Fair Chance Act does not override those state laws.
6 So I don't think it's necessary to add in additional
7 exemptions.

8 COUNCIL MEMBER TORRES: Because my
9 interpretation of the Administration's testimony, and
10 I will grant that it's my interpretation, I could--is
11 that there's no one size fits all approach, that New
12 York City has its own set of dynamics and
13 circumstances and we might require, even though we
14 support the goals of the legislation, the category of
15 exemptions should be different and maybe even more
16 expansive than exists elsewhere. Is that--do you
17 believe [sic] that that's a--could become a pretext
18 for watering down the core of the legislation, or?

19 ROBERT NEWMAN: Well, I haven't heard the
20 Administration say that want to water it down. I
21 don't think they do. Now, certain city and state
22 laws already include exemptions for peace officer
23 positions. So, it wouldn't be unexpected to exempt
24 those provisions, but I think we should be very
25

1
2 careful about anything that really would water down
3 the bill. I would hate to see that.

4 COUNCIL MEMBER TORRES: Could you
5 envision any reasonable exemption beyond what state
6 and federal law requires or?

7 ROBERT NEWMAN: I would have to look at
8 the specifics, but at the moment I don't see a need
9 for it.

10 COUNCIL MEMBER TORRES: Okay. Gold
11 standard question, right? Is there an iteration of
12 ban the box that can be seen as a gold standard, that
13 if I were, you know, a Congressman and I was looking
14 to implement it nationally, what would be the gold
15 standard?

16 ROBERT NEWMAN: I think Mr. Keefe could
17 best answer that.

18 COUNCIL MEMBER TORRES: Anyone can answer
19 it.

20 PAUL KEEFE: The best law right now is
21 the law in San Francisco, I believe. You would say
22 that as well. NCLP looks at all these laws around
23 the country, but San Francisco does many of the same
24 things that we do here. You can only ask after a
25 conditional offer. There are a certain number of

1 years after which you can't consider a conviction,
2 and so that is sort of--

3
4 COUNCIL MEMBER TORRES: [interposing] How
5 many years?

6 PAUL KEEFE: It's seven years for all
7 convictions in San Francisco. And so that is really--
8 -does the same sorts of things that we do, because it
9 creates a reasonable process, a chance for a person
10 to present themselves first before their record comes
11 into play, and it puts certain convictions off limits
12 for employment purposes. There's a certain amount of
13 time it's going to pass where the conviction just
14 can't be considered anymore, which I think we can
15 envision as fair, and it's also supported by social
16 science research about recidivism and how the passage
17 of time is really the most important factor when
18 determining whether someone actually poses a risk
19 based upon their conviction record.

20 COUNCIL MEMBER TORRES: And so Intro 318
21 is largely modeled after the San Francisco version,
22 or?

23 PAUL KEEFE: Yeah, that and the
24 Massachusetts--

1
2 COUNCIL MEMBER TORRES: [interposing] And
3 any noteworthy differences, or?

4 PAUL KEEFE: The main difference is the
5 time periods. We have slightly different time
6 periods, and we have a fine that is applied to
7 employers who don't follow that process.

8 COUNCIL MEMBER TORRES: What is the
9 different time period?

10 PAUL KEEFE: The different time period
11 is, for New York it's five years for misdemeanors.
12 After that they can't be considered. Ten years for
13 felonies, running from date of sentence or if the
14 person was incarcerated, the day that they got out.
15 San Francisco places that time period at seven years
16 for all convictions.

17 COUNCIL MEMBER TORRES: And one concern--
18 just one final question.

19 CHAIRPERSON MEALY: You're on a time
20 constraint.

21 COUNCIL MEMBER TORRES: One concern that
22 seems reasonable is the administrative cost. How
23 have other municipalities coped with that, just the
24 cost of, I guess, you know, I guess the concern about
25 small businesses that was mentioned earlier? I think

1 that's something that shouldn't be taken lightly. So
2 how have other municipalities grappled with that?
3 And that's my final question.

4
5 AMY HONG: So, I think it depends on the
6 locality. If we're talking about San Francisco, they
7 actually enforce their Fair Chance Act through their
8 Office of Labor Standards Enforcement, which has
9 already--which is a city office that is already
10 tasked with enforcing a number of city laws from
11 minimum wage to paid sick days, everything. So, it's
12 an efficient way of doing it because it's just folded
13 into all of the other enforcement that they're doing,
14 and a key part of the enforcement in terms of
15 administrative cost is educating employers and
16 workers alike about their rights and responsibilities
17 under the law, and as time passes and as more people
18 are made aware of the requirements of the law and how
19 to comply, those costs go down.

20 CHAIRPERSON MEALY: Thank you. With time
21 constraint, we'll ask the whole panel to leave and
22 we're going to have the next panel come up. Thank
23 you. Mr. Wayne Speed, Kathleen Wylde, Marilyn
24 Scales, Reverend Darren Ferguson [sp?], Lawrence
25 Medelli [sp?], and Richard Norat [sp?]. We will

1
2 really be a three minute constraint. I understand
3 some of our testimonies are very important, but we
4 don't have that much time in this facility, so could
5 you please keep your testimony to a minimum. You may
6 start Mr. Speed.

7 WAYNE SPEED: Good morning ladies and
8 gentleman of the Council and those who have come to
9 support the passing of this Act. My name is Wayne
10 Speed. About three years ago I was in the WEP
11 program through Transit, and I met all the
12 qualifications for 11 months and three weeks. I
13 missed one day. All types of perfect attendance as
14 far as the work detail etcetera. I had letters of
15 recommendations from all three of the supervisors,
16 even one of the supervisors that actually run the WEP
17 program throughout the five boroughs, which I was
18 surprised to see that myself. But anyway, I went
19 through the process. Got through 180 Livingston
20 [sic], and I was denied. But the strangest things
21 that through the process of going to 370 J Street and
22 2 Broadway, I was constantly told only bring what we
23 tell you to bring. So they gave me this list of
24 various documents and I followed the direction. Then
25 I was denied for not having certain documents

1 presented to show my rehabilitation. I was actually
2 told, "You'll be contacted by phone and/or by mail."
3 In other words, "Don't call us, we'll call you." And
4 I found a lawyer, a very good lawyer, Ms. Hong, and
5 we challenged this decision and we won, thank God,
6 but what about the people who walked away discouraged
7 that didn't become resilient at that moment and they
8 just left it alone at that? This is why this act is
9 so important, and I will back it. I will support it
10 in any way I possibly can. That's why I'm here
11 today, because it is for those that will be behind me
12 who will face this same ordeal and not have the
13 perseverance to challenge them and continue to fight
14 for what is right. Yes, I have a criminal record.
15 I'm not proud of that, but I can't change my past,
16 but I can change my future. I can look forward to
17 what I know I am capable and possibly I can do today.
18 I can't worry about yesterday; it's gone. Yeah, I
19 understand what I did was wrong, but does that mean
20 that I should not get a second chance at life? See,
21 I was told a long time ago, it's not over until they
22 throw the dirt over me. I made a conscious decision.
23 While incarcerated, I did a whole lot of
24 introspection on myself and what I did to my life,
25

1 and what I had done to those that were around me who
2 actually loved me, and it bothered me so much. And
3 in going through this process with Transit I actually
4 had an opportunity for the first time throughout
5 these decades of doing wrong to look at everything I
6 have done all concise together, and it made me sick.
7 So, today, by us being here and starting this process
8 for those who will come after so that they will have
9 to go through this ordeal, because--an another thing,
10 just to change for a minute, I'm listening to
11 everyone here talk and I'm listening to y'all express
12 the various little niches that might be in there that
13 will help this act after the fact, God willing, it
14 gets passed. We need to have strenuous penalties
15 implemented in their for these companies that will--

17 CHAIRPERSON MEALY: [interposing] That
18 will come in.

19 WAYNE SPEED: not follow these guidelines
20 if they're set forth, because the law is in there,
21 but yet, they still find those little curves to go
22 around and not actually--

23 CHAIRPERSON MEALY: [interposing] Sir,
24 we understand. That will be in. The bill is still
25 not finished. It will be amended also--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CIVIL RIGHTS

WAYNE SPEED: [interposing] I have to stress that because I'm listening--

CHAIRPERSON MEALY: [interposing] Thank you so much--

WAYNE SPEED: [interposing] You're welcome.

CHAIRPERSON MEALY: for your testimony. Thank you. The next--thank you, sir.

MARILYN SCALES: Yes. Hello, my name is Marilyn Scales. Thank you for having us, Chair Mealy and Civil Rights Committee. In '95 I was convicted of a felony. I did my time and I came home, and I applied for jobs and jobs, and jobs. And you know, in the--at that time I had the paper application and I never got call-backs, you know? I had children that I had left behind because I was in prison. I came back. I fought to get my kids back. I did everything right, but I just couldn't get that job. So, I couldn't be self-supporting for my children. And you know, as a woman, not being able to do for your children, it effected much more than just my self-esteem. You know, in the last few years I've been fortunate enough to get part time jobs, and that has helped mem, but I still haven't been able since

1 '97, January 21st, 1997 that I came, I have not been
2 able to be--actually get on my feet, get a real self-
3 supporting job where I have health insurance, where I
4 have all that. I still have to depend on Medicaid,
5 food stamps, you know. I want to be self-supporting.
6 I don't want to be depending on the government. I pay
7 my own rent. I might not be able to make it to food,
8 but I pay my rent, you know? But I'm doing my best,
9 and the Fair Chance Act will help me find employment
10 by removing that box asking about my criminal history
11 on job applications. This gives people like me who
12 have served time an equal opportunity to compete for
13 jobs. We can work to support ourselves, our
14 families. This does not give formerly incarcerated
15 people preference for the job. That's not what we're
16 asking. We're not asking for preference. We are
17 asking to have some type of opportunity for these
18 jobs as anyone else. After the application process,
19 if we have been chosen as the candidate, then
20 employers have the option to see our criminal
21 history, and we have a chance to explain to say why,
22 what happened? I used drugs. I sold drugs. I had
23 traumatic experience in my life and I used drugs.
24 You know? So, I think someone meeting me and
25

1 saying, "Oh, she seems okay." And like really giving
2 me that one shot that I need, you know, to prove
3 myself, because you know, we got to work harder than
4 the regular one, right? I haven't been able--I
5 haven't been in trouble again. I haven't even had a
6 ticket. I'm sorry. Again, since being released from
7 prison, I feel like I still am paying for my crimes,
8 still being punished. When can I say I finally done
9 my time?
10

11 CHAIRPERSON MEALY: Thank you.

12 MARILYN SCALES: I hope it's when the
13 Fair Chance Act is passed.

14 CHAIRPERSON MEALY: Thank you so much.
15 Thank you. Next panel. Press the button please, and
16 state your name.

17 : Good afternoon. My name is Richard
18 Norat. I'd like to thank the City Council for
19 allowing me the opportunity to testify today about
20 this very important issue. I've spend the last 20
21 years of my life in a New York State penitentiary. I
22 was paroled, and I entered the Doe Fund's Really,
23 Willing and Able Program. Today, I am a licensed
24 pest control professional in the great state of New
25 York, and I work fulltime for the Doe Fund's

1 extermination service known as Pest at Rest. I was
2 hooked on drugs since the age of eight years old.
3 Like my brothers, I spent my life on the streets
4 committing crimes, scaring people and terrorizing
5 this city. I never had the opportunity for an
6 education or to learn responsibility or to become a
7 contributing member of this society. That changed
8 when I went to prison. I learned how to read in jail.
9 I educated myself, and I saved up the 17 cents an
10 hour that I earned to buy myself a radio just so I
11 could improve my vocabulary. And when I got out on
12 parole I headed straight to the Doe Fund where I got
13 the chance to grow myself and become a whole person,
14 a real person, a tax paying contributing member of
15 this society. They didn't see the troubled young man
16 I was when I first went to jail or the person I was
17 when I got out. They saw the person I could be, the
18 person who I am today, and they gave me the hand up
19 that I so desperately needed. Thanks to them and the
20 opportunities that they offered me, I have a stable
21 job, a home of my own, and a life that I'm very proud
22 of. The reason I'm sharing this with you today is
23 because there's an irony in my story. Before I went
24 to jail I had no skills. I had no discipline and I
25

1
2 could barely even read. And yet, without the Fair
3 Chance Act an employer's more likely to reject me
4 today just because of my criminal record. The Doe
5 Fund and my bosses at Pest at Rest saw that my record
6 was just what it was, a turning point in my life.
7 Because I went to prison, that's what made me into
8 the person that you see sitting here before you
9 today, a trusted professional that people can depend
10 on with skills and education and a bright future. In
11 my opinion, that is what makes me a good employee,
12 and that is what I want all employers in New York
13 City to know. I'd like them to know that there are
14 thousands of men just like me who ae coming out of
15 prison and graduating from programs just like ready,
16 willing and able. They need your compassion. They
17 need your trust and the opportunity for a good life,
18 but most importantly, they're willing to earn it.
19 So, please, support the Fair Chance Act. Thank you
20 very much for this opportunity.

21 CHAIRPERSON MEALY: Thank you. Now, I'm
22 for ready, willing and able also. Next?

23 KATHY WYLDE: Hi, I'm Kathy Wylde with
24 the Partnership for New York City. Thank you,
25 Chairman Mealy, Council Member Williams for inviting

1 us to testify. I think it's appropriate that this
2 panel is a mixture of advocates for the bill and
3 those of representing employers who are concerned
4 about its provisions because I think we all share a
5 commitment to a fair opportunity, a fair chance for
6 every New Yorker who wants to work to have a job, and
7 certainly that is the spirit in which we testify. We
8 think at this point today that enacting the Fair
9 Chance Act is not necessarily the best way to
10 accomplish its objectives. We believe that employers
11 are already under a series of regulations including a
12 state law. If the enforcement of that state law is
13 what the problem is here, then we ought to address
14 that issue together. I'm not sure if the Council has
15 taken the opportunity to talk to employers about
16 creating a voluntary public/private partnership
17 effort to try and deal with what we recognize as the
18 problem of discrimination in hiring of ex-offenders.
19 It's something we would welcome the opportunity at
20 the partnership to discuss with you and to work with
21 you on, because in an atmosphere where building a
22 business in New York City is difficult, the
23 increasing problem of cyber fraud, identity theft
24 where employers are held responsible for their
25

1 validation of the records of their employees, and
2 they're held responsible not just by their customers
3 but under the law, and the legal enforcement
4 agencies. The liabilities associated with Council
5 intervention with the criteria for hiring is a
6 serious one to employers. So, while we agree with the
7 goals of the law, we are very concerned about the
8 specific implications for employers. We've provided
9 some detailed material that explains the nature of
10 the concerns of employers. I will say that many of
11 our members have voluntarily eliminated the box on
12 the application and so that people are not dismissed
13 because of their application, because it's on their
14 application. They have supported legislation like
15 that in New Jersey, which has taken steps to remove
16 that, but they have not--but they are concerned about
17 the nature of this legislation, in part because our
18 employers have work sites in many states across the
19 country, cities around the country, always--and a
20 local mandate on their hiring practice is one that is
21 difficult, expensive, and complex to administer. So,
22 we would welcome the opportunity to work with you on
23 this issue to further discuss the terms of the bill,
24
25

1
2 but we feel the bill as written is something that we
3 have to oppose.

4 CHAIRPERSON MEALY: Thank you.

5 UNIDENTIFIED: Chair Mealy, Council
6 Members Williams and Torres, thank you for giving me
7 the opportunity to testify. I represent NEMRA [sic],
8 an organization of national chain retailers with
9 stores in the city. We have problems with the way
10 this intro is presently written. Correction Law
11 Article 23A defines any adverse employment action
12 against persons previously convicted of one or more
13 crimes is discriminatory unless there's a direct
14 relationship between the specific employment being
15 sought in one or more of the crimes, or if granting
16 or continuing employment would involve an
17 unreasonable risk to the property's safety or welfare
18 of specific individuals or the public. Intro 318
19 would dilute the definition by including inquiries or
20 statements about prior convictions until after a
21 conditional offer of employment has been extended
22 even if a true response would justify denial of
23 employment under Article 23A. The need for NEMRA's
24 members to protect themselves, their employees and
25 their customers from dishonest employees is palpable.

1
2 A dishonest employee could sell or misuse customer or
3 coworker credit card numbers, sell customer's social
4 security number to identity thieves, compromise the
5 integrity of an employer's digital firewall or take a
6 kickback when procuring goods or services for the
7 employer. That being said, we agree that disclosure
8 of prior convictions on an initial application can
9 result in not being interviewed. That's why most ban
10 the box bills defer the ability to ask about criminal
11 convictions from the initial application to either at
12 or after the initial interview. NEMRA would not
13 oppose such a bill. Not every applicant is
14 interviewed. The qualifications that earn an
15 interview and hopefully a good interview are factors
16 in favor of hiring that can be balance and weighed
17 against any factors against being hired, arising out
18 of a prior conviction. But Intro 318 does not just
19 ban the box. There is a financial cost associated
20 with discovering a potentially disqualifying criminal
21 record at the end of the hiring process. It means
22 restarting the hiring process and dealing with the
23 incriminations that can result and are likely to
24 result when a job offer once tendered is withdrawn.
25 If an employer were to make a premature inquiry or

1 statement about prior convictions and applicants
2 response could not be used to deny employment, even
3 if its substance would justify doing so under Article
4 23A. To add insult to injury, the employer would be
5 liable to the applicant for damages of up to 1,000
6 dollars. Finally, a balancing test under Article 23A
7 is a defense against negligent hiring lawsuits.
8 Unlike Article 23A, no matter how relevant, felony
9 convictions more than 10 years ago and misdemeanor
10 convictions more than five years ago can't be
11 considered. The defense will have been compromised
12 and claims over against the city will--

14 CHAIRPERSON MEALY: [interposing] Sir--

15 LAWRENCE MEDELLI: follow. Thank you
16 very much.

17 CHAIRPERSON MEALY: Thank you so much.
18 Our last panelist?

19 DARREN FERGUSON: Yes, good afternoon,
20 Councilwoman Mealy, Williams and everyone else
21 present. I come--my name is Darren Ferguson. I'm the
22 Pastor of Mount Carmel Baptist Church. I come as a
23 representative of the Faith in New York, of Vocal New
24 York, and I just wanted to add my voice to all of
25 this that's going on. As someone who was formerly

1
2 incarcerated myself, I've worked in various arenas
3 over the 16 years since my release, including working
4 for the state. I currently work for the city at La
5 Guardia Community College. I've worked as a minister
6 working with children, done many things. And one of
7 the things that I'm hearing that's lacking here other
8 than the personal testimonies is that we're not
9 understanding what's going on on the ground. I
10 worked for a year in the Fatherhood Program at the
11 Osborn Association, and one of the things that I hear
12 constantly in teaching young fathers and fathers who
13 have been incarcerated how to be employed and how to
14 be better fathers, is that there's a level of angst
15 and a level nellyism that they believe that the
16 system is not going to work for them no matter what
17 they do. They don't even want to go and look for a
18 job because they don't believe anybody's going to
19 hire them simply because of their record. They don't
20 even believe they can get an interview. I've taught
21 Article 23A until I've been blue in the face. I've
22 showed them the legislation. I've showed them what
23 they can do in terms of bonding. I've explained to
24 them that you can go down and get a certificate of
25 disposition from the court where you were convicted

1 to bring an employer a little bit of confidence that
2 you're capable and what you've done since you've been
3 gone. I graduated from New York Theological Seminary
4 in Sing Sing. I've done all of the things I'm
5 supposed to do and I've not gotten one job in 16
6 years based on a job application. Every job that
7 I've gotten is because I was fortunate enough to be
8 able to develop a network while I was in prison, and
9 for the other hundreds of thousands of nameless,
10 faceless individuals who didn't have the opportunity
11 to create that same network that I did, we're leaving
12 them by the wayside by at least not making gesture in
13 passing a bill that says to them that at least you
14 can get an interview, that at least you'll be seen as
15 a human being before you get to the process of
16 somebody saying, "The box is checked." And throw it
17 in the garbage without any possible recrimination.
18 There's no way to legislate that. There's no way to
19 check that. There's no way to tell an employer that
20 you're doing that. So the only thing that we can do
21 as a city, as a people, as people who are passionate
22 and know that every New Yorker deserves a fair chance
23 and say to them that we're at least going to make the
24 gesture by starting, by taking the box off to give
25

1
2 you an opportunity to show your humanity in a job
3 interview and show that you're capable, show that
4 you're able to do a good job, show that you're able
5 to feed your family and do all of the things that
6 everybody should have the right to do, and the fact
7 that you have a felony in your record should not
8 preclude you from doing that, but what it should do
9 is say to people, "You paid your debt, alright. We
10 may scrutinize you a little bit more, but we are
11 going to give you a real fair chance." And it has
12 not been provided, and to sit here and to act like
13 we're doing something grandiose by passing this bill
14 is not enough. This is just the first step in many
15 steps that need to be taken in order to bring
16 fairness to our city and to our country and to our
17 world. And if not, we're continuing to create an
18 underclass of citizens who will continue to operate
19 on the bottom half of our society and never have a
20 fair chance. Thank you.

21 CHAIRPERSON MEALY: Thank you.

22 [applause]

23 SERGEANT AT ARMS: Be quiet, please.

24 Thank you.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CIVIL RIGHTS

CHAIRPERSON MEALY: I'm going to pass the offering now. Alright. Thank you, Pastor. Reverend, I'm sorry. My colleague, Jumaane Williams, have a question.

COUNCIL MEMBER WILLIAMS: Thank you, Madam Chair. Thank you all for your testimony. Thank you, Pastor, for the rousing kind of sermon, I guess. Thank you all for--thank you for those who gave personal testimonies. Really appreciate you coming to add faces to the numbers. I did have a couple questions. I'm sorry, I can't remember your name?

[cross-talk]

COUNCIL MEMBER WILLIAMS: From which?

UNIDENTIFIED: NEMRA.

COUNCIL MEMBER WILLIAMS: NEMRA. So I understood some of the oppos--thank you. I understood some of the opposition. So the first one I think had to do with when we ask the question, was that correct?

UNIDENTIFIED: Yes, I would like--we would prefer that the box come off the application and that the question could be asked either at or--

1
2 CHAIRPERSON MEALY: [interposing] Could
3 you come and talk into the mic, please?

4 UNIDENTIFIED: I'm sorry. Either at or
5 following the first interview.

6 COUNCIL MEMBER WILLIAMS: So you
7 understand why we wouldn't want to ask the question
8 at the beginning, is that correct?

9 UNIDENTIFIED: Yes, and that's what my
10 testimony reflected.

11 COUNCIL MEMBER WILLIAMS: Because, from
12 my understanding, the same reason we won't want to
13 ask at the beginning is the reason we want to ask at
14 the interview, because it would allow an employer to
15 bifurcate those who have a record and don't have a
16 record and then dismiss them without giving them the
17 proper due.

18 UNIDENTIFIED: Can I respond to that?

19 COUNCIL MEMBER WILLIAMS: Sure.

20 UNIDENTIFIED: Because there's a--let's
21 understand the dynamic. Not everybody gets an
22 interview. You have to be pretty good to get an
23 interview, right? So, that's in favor of the
24 applicant. Now, the applicant hopefully does well at
25 the interview. So those are all things that are

1
2 positive in favor of hiring. Now let's say at the
3 interview the question is asked, or say it's asked
4 afterwards or a third issue, at the interview there
5 is a gap in employment, and the employer says, "Why
6 is there a gap in employment?" So, we're there
7 already, but the applicant now is a human being. He
8 or she has gotten an interview, which is a sign of
9 merit, doing well at the interview, which is another
10 sign of merit, and so the balancing that Article 23A
11 talks about can be a meaningful process, can be an
12 individualized process where the applicant is not a
13 cypher [sic]. The applicant is not the applicant's
14 conviction. The applicant is a human being in all
15 his or her diversity and glory.

16 COUNCIL MEMBER WILLIAMS: There are--I
17 think there are a lot of employers and probably most
18 of them who are good actors, and unfortunately, there
19 is quite a number that are bad actors, and so we've
20 seen that the law is present. Although you're not
21 allowed to discriminate, we have been unable to prove
22 that the discrimination is happening because of the
23 way that the question is asked, but we can be clear
24 that it is happening because of the number of people
25 who are not getting call-backs and then the people

1
2 who do get call-backs when the questions are not
3 answered. The problem I have is if we do it when
4 you're asking, it still would be hard to tell whether
5 or not you have made a decision, whether there are
6 ten people and you didn't choose the five that had
7 criminal conviction because of the criminal
8 conviction, whereas if we ask--if you ask the
9 question at the conditional offer of employment, we'd
10 be able to then tell that the reason you rescinded
11 that was because of the conviction.

12 UNIDENTIFIED: But you know, if you do at
13 or following that first interview, you still have to
14 do the analysis under Article 23A. It still is given
15 under Intro 318 to the applicant, and the applicant
16 has an opportunity to respond. So you have all the
17 protections of Intro 318, except you don't wait until
18 after the process is over and you've lost maybe
19 another potential employee or you've gotten
20 somebody's hopes up and now you're dashing them.
21 You're doing it a time when it's logical in the
22 interview process and where the applicant has become
23 more than just a name, a cypher.

24 COUNCIL MEMBER WILLIAMS: So, as we've
25 said, some of the issue is enforcement. Unless we

1 can force a protection, it doesn't do much good, and
2 so we've had that protection when the question's
3 asked at the beginning. My fear is if we ask it when
4 you're saying it, although they should be doing it,
5 because they should be doing it actually at the
6 beginning and they don't. we're not going to be able
7 to know whether they're doing it at the interview
8 process in the way they're supposed to do it. So, it
9 helps with enforcement to have a mechanism that
10 actually triggers the enforcement to let us know, and
11 most of having--run a nonprofit and having had a
12 small business, the for profit small business failed,
13 but that's another story. But having gone through
14 interview process, I do know that you don't release
15 and even have an interview for my composition [sic],
16 you don't release all the people that you've
17 interviewed until the person you want has accepted
18 the job for the same reason, but the flip, someone
19 you offered the job may not take it, and you don't
20 want to do the whole process again.

21
22 UNIDENTIFIED: There are certain
23 practical dynamics that are--

24 CHAIRPERSON MEALY: [interposing] Pull
25 the mic kind of closer to you, sir.

1
2 UNIDENTIFIED: I'm sorry. There's
3 certain practical dynamics that are at play, and
4 believe me, I am sensitive when I say this. When
5 somebody is--has been the object of discrimination,
6 to say well, let's proceed a little bit slower, it
7 takes, you know, a lot of nerve to say that. So, I
8 understand that. And what I'm saying is you're
9 talking about an enforcement issue. A lot of these
10 ban the box statutes that I've seen all around don't
11 wait until after a conditional job offer has been
12 made. Even the city of New York in its Executive
13 Order says you wait until the first interview. I
14 would say try it. Let's see what happens. Let's see
15 if there are other aspects of this law that can be
16 tweaked, and let's get a little experience with it.
17 You know, in a strange way, it's what the Mayor's
18 Counsel was saying, because we're in--even though
19 other places have these ban the box laws, this is
20 beyond the ban the box law and we're in terra
21 incognito and we want to do it right in New York,
22 because we want what New York does to be the example
23 that's used around the country. We want New York's
24 law to be the gold standard, and by the way, when I
25 said about compromising the defense against negligent

1 hiring lawsuits, that's not a throw-away line.

2 That's real. I practice law for a living. I
3 litigate for a living, and let me tell you, I would
4 love to be able to deal with something like that and
5 try to figure out how to sue somebody that--

6
7 COUNCIL MEMBER WILLIAMS: So, I don't
8 think you actually persuaded me that moving it where
9 you're saying it will get to where we want based on
10 what I said. I understand that it seems something
11 that will be frustrating to the employer, I guess, is
12 the best thing I can understand, but I didn't get a
13 feedback of--push back on what I said of why we need
14 it where we need it, because we need to make sure
15 something is triggered so that people are actually
16 following. But I would say one good thing was you
17 said, let's try it. I would say let's try it this way
18 and then we come back and see how we're doing and if
19 we need to change it, we can change it then. But I
20 did want to know if there were any other provisions
21 that particularly you were troubled with?

22 UNIDENTIFIED: The seven days for a
23 response for members of NEMRA would not be a problem,
24 but I think for a smaller business that has an urgent
25 need, and I was just thinking of what would be an

1
2 example. Let's say that you had a small grocery
3 store and you needed somebody to be like a cashier,
4 and you needed that person now. You know, holding a
5 job open for seven days is--I think would be an
6 issue. I mean, it's not my clients. I don't have
7 experience with it, but logically, it seems to me
8 that that could be an issue. And in terms of
9 exemptions. I mean, I sort of agree with the
10 advocates. The exemptions are not in Article 23A,
11 they are in other laws, and you know, maybe
12 exemptions would be in other laws, but what we are
13 scared witless about are people who convicted of
14 being a hacker or something like that, and you know,
15 they get access to our computers. A number of our
16 members have had issues where the firewalls of the
17 digital systems have been compromised, and we are
18 scared out of our minds, because then the customers
19 lose faith and it's a huge, huge problem.

20 COUNCIL MEMBER WILLIAMS: The problem
21 that you had, were people who had prior convictions?

22 UNIDENTIFIED: No, I'm not saying that
23 the people had prior convictions. I don't know the
24 facts in any of them. I'm just saying that we're very
25 sensitive about assets--

1 COUNCIL MEMBER WILLIAMS: [interposing]
2
3 It sounds like you should be sensitive to everybody
4 then, if they weren't people who necessarily had--

5 UNIDENTIFIED: [interposing] Yes.

6 COUNCIL MEMBER WILLIAMS: convictions.

7 UNIDENTIFIED: Yes, yes. This is bigger
8 than a conviction thing. So what I'm saying, if
9 you're asking me is there a type of employment that I
10 might want to break out, that's the type of
11 employment that I might want to break out.

12 COUNCIL MEMBER WILLIAMS: So, I
13 understand that, and we're taking all of this back
14 into--so I could see the ones that are kind of are
15 understandable, see if we could do something there.
16 I understand some of the issues that may come with
17 the seven days. But again, two things: One, for most
18 jobs that I've known--usually, there's usually a few
19 days before someone accepts or not accepts. You
20 usually keep people in cue, and also this only comes
21 up if you use background checks. So, if you--or if
22 you're taking the job back. So, there shouldn't be
23 that many times when they're actually taking the job
24 back, so it would be a few times. But I understand
25 that, and it's something that I actually want to look

1
2 into a little bit more. And again, Article 23, for
3 the most part, except for the ten year, five year,
4 still applies. So you're not going to have a hacker
5 working with computers, and so you--the sensitivity
6 to those jobs still exist and will still exist after
7 we pass Intro 318.

8 UNIDENTIFIED: But what's going to happen
9 is we're going to do the Article 23 analysis. We're
10 going to give them the written analysis, and somebody
11 with a hacking conviction more than five years or
12 more than 10 years before whether it's a misdemeanor
13 or a felony, will never be able to consider that and
14 maybe hire them, and you know, that's a danger.

15 COUNCIL MEMBER WILLIAMS: But you do know
16 that Article 23A already has time as one of the
17 things that you have to consider, and that most
18 studies show that after that particular time period
19 you're no more likely to commit a crime than anyone
20 else.

21 UNIDENTIFIED: I actually agree with
22 that. I do agree with that, because this is not a
23 field that it's the first time that I've ever dealt--

24 COUNCIL MEMBER WILLIAMS: [interposing]
25 Well, that's why we're trying to make the law tailor

1
2 to what we actually know, and not what people's
3 emotions are going to lead them to believe, because
4 sometimes that causes problems, but I do want to say
5 thank you. And I did want to get to Ms. Wylde unless
6 you had something else that you wanted to say.

7 UNIDENTIFIED: I just wanted to say that
8 I hope to work with you on a going forward basis to
9 make this a better bill.

10 COUNCIL MEMBER WILLIAMS: Absolutely.
11 I'm happy to meet with you. I'm sorry we didn't meet
12 before. We met with a host of people in the
13 industry, and I'd love to talk with you. And so, Ms.
14 Wylde, I thank you for coming and testifying, and
15 thank you for meeting with us before. I did want to
16 have the same kind of conversation about which
17 particular issues, because I know you said in general
18 you support the concept. Which particular parts of
19 the bill were concerning?

20 KATHRYN WYLDE: The issues that we
21 identified and have been identified by various
22 employers, it's not-- I mean, we canvas our
23 membership to ask us where we're concerned. The
24 overall--I mean, their overall issue is having a--
25 generally, they support national statewide kind of

1 regulation and enforcement because doing it city by
2 city when you've got employers that have people in
3 many jurisdictions is just hard for them, because
4 they've got one workforce. They try and treat them
5 equally, one hiring process. And so, this kind of
6 intrusion into the hiring process that makes it
7 different in New York City than in Long Island than
8 wherever is tough for employers to implement, but
9 they're large. So the other concerns are basically
10 outlined here in terms of where it exposes employers
11 to liability, where it limits their ability to make
12 sure that they're not going to be accused or sued for
13 irresponsible hiring practices, where they didn't
14 really vet someone, they didn't check someone, and it
15 comes in atmosphere in a lot of the same concerns
16 about the credit check bill. It's an atmosphere
17 where employers feel very much on the defensive, and
18 at the same time as some of the testimony from Mr.
19 Norat, the Reverend, etcetera said today; in order to
20 solve this problem, it's not simply eliminating the
21 check the box on the application, which most
22 employers don't object to. The problem is how do you
23 put together the public/private cooperation to
24 encourage people to support affirmative hiring
25

1
2 programs to support the kind of career and skill
3 readiness programs, and that's the conversation that
4 we'd like to see take place in the context of this
5 problem. We don't think passing this bill while
6 understand symbolically it's important, we don't
7 think it's the solution any more than as you point
8 out 23A is the solution. We think it requires a
9 larger solution, and to do that, the council has to
10 have good working relationships with employers, and
11 employers can't feel on the defensive. So, I think
12 the spirit that you've been discussing about employer
13 participation in crafting legislation, but also
14 recognizing that legislation while a good symbol does
15 not solve this problem, and that's going to take a
16 much larger working relationship, and that's what I
17 think we would like to push on the Council to try and
18 think about. I know it's harder. It's easier to
19 pass a bill than to build a program that can scale up
20 and serve a lot of people, but I think we've got to
21 have a relationship where we're working on both
22 sides, and that's our concern with the legislation.
23 That it's another--employers will see it as a burden,
24 and they won't see a positive track that really makes

1
2 a difference in the lives of people that are shut
3 out.

4 COUNCIL MEMBER WILLIAMS: So, what I
5 understand it's not necessarily many specifics, but
6 in general, there's some general things. I would say
7 that I agree this doesn't solve the problem, but I
8 don't know that it's not helpful. So, if there are a
9 lot of things that we have to do that means there are
10 different parts, and so this is one of the parts to
11 it.

12 KATHRYN WYLDE: I think it's important to
13 have an atmosphere of mutual cooperation that--

14 COUNCIL MEMBER WILLIAMS: [interposing]
15 I got it.

16 KATHRYN WYLDE: certainly I think the
17 report that the Mayor's office put out last week on
18 the career pathways is a great start in a positive
19 constructive direction, and it would be great to pick
20 up on some of those issues with the council and see
21 what could be done in terms of allocation of
22 resources in a different way. I don't know if you
23 saw that report, but they talk about the city spends
24 500 million dollars a year on workforce development.
25 Only seven percent of that money goes to skills

1 training, just as an example. There's a lot that we
2 can do together to address this problem. I think that
3 legislation in the absence of real collaboration with
4 employers is not going to be particularly effective.

5 I agree--

6 COUNCIL MEMBER WILLIAMS: [interposing]

7 So, I just want to make sure I get to some of the
8 things that you said. So, I know one of the issues
9 had to do with different states. I'm not sure how
10 much we'd be able to factor that if discrimination is
11 happening here. We really have to get to that. The
12 interference with standard employment practices, I
13 guess I part of the state, and the legislation
14 restricts what information an employee may consider
15 when vetting. I don't know that it necessarily
16 restricts that. It changes what we mentioned, the
17 time that we can ask it, and I'm not sure what
18 additional costs are associated with that. So, if
19 you can spell that out a little bit more, why--how
20 much more it would cost to change when you ask it.
21 And then I know you had mentioned exposing the
22 employer to greater liability. I think that would
23 only happen if they violate the law. So, if they're
24 violating the law now, they should actually be
25

1
2 exposed to liability, but we haven't been able to do
3 that because of the way the current law is crafted.

4 KATHRYN WYLDE: No, they're exposed to
5 litigation if--to litigation and the cost of
6 litigation and defending themselves regardless of
7 whether they've violated the law. All you have to do
8 is bring an accusation to expose--

9 COUNCIL MEMBER WILLIAMS: [interposing]
10 That's current today, though.

11 KATHRYN WYLDE: That is current today,
12 but you're extending the terms and conditions under
13 which that could happen.

14 COUNCIL MEMBER WILLIAMS: Well, just to
15 be clear, I think what we're doing, it is true that
16 they're exposed to liability. What is not true is
17 that we don't have the mechanism to let people avail
18 themselves of that. So, this would actually let
19 people avail themselves of that as they should if
20 they're being discriminated against.

21 KATHRYN WYLDE: And why wouldn't you want
22 that to be under state law?

23 COUNCIL MEMBER WILLIAMS: Because the
24 state--as we said now, they can be sued, but it's
25 very difficult to sue them and prove that

1 discrimination happened. So the only thing this
2 would allow is if the discrimination did happen, it
3 would be much more blatant and some would be able to
4 bring suit against them which they could today. So
5 the difference I think is not that we're doing a law
6 that gives them something greater, it's just
7 enforcing what's already there that we haven't been
8 able to enforce.
9

10 CHAIRPERSON MEALY: Discrimination.

11 COUNCIL MEMBER WILLIAMS: But thank you
12 very much for your testimony. I'm looking forward to
13 continuing speaking with you. I don't know--I think
14 he wants to say a statement. It's up to the Chair.

15 CHAIRPERSON MEALY: You want to make a
16 statement?

17 UNIDENTIFIED: I just want to supplement
18 that Ms. Wylde--the answer to Ms. Wylde's question. I
19 think there are two types of litigation. One is
20 litigation by people damaged by a dishonest employee,
21 you know, negligent hiring litigation. So let's
22 leave that on the side, because that's real. Here,
23 there is an enforcement mechanism under Article 23.
24 There is an enforcement mechanism under Article 23A,
25 and there will be an enforcement mechanism--what

1
2 you're trying to do, I understand what you're trying
3 to do by making the conditional offer, you're trying
4 to do a bright line to show that, okay, the only
5 reason this offer is being rescinded is because of
6 the criminal record, but there's still a balancing
7 test. It's still a balancing test. The employer
8 gets to make that decision, and Intro 318 doesn't
9 change that. So, yes, you'll have the conditional
10 offer, and if the--

11 COUNCIL MEMBER WILLIAMS: [interposing]
12 I'm sorry, I don't understand what you're saying.

13 CHAIRPERSON MEALY: I was listening. You
14 just said that it's still up to the employee, but
15 earlier you just said that coming for the job, he got
16 the interview. It's hard to get an interview. Then
17 he's doing great in the interview, and then you
18 asking them to say have you ever been incarcerated,
19 then yes, but now we putting them in a predicament
20 where you said it's hard to get an interview. Here
21 it is, he's doing great at the interview, so it
22 shouldn't matter if he had a record or not. You just
23 statin' I like who I see before me, and I believe I
24 want him to work for me, but then if he tell you or
25 she say that I had a record, then it is an

1
2 opportunity where you can discriminate. You'll say,
3 well, he kind of look--or she was okay until I said
4 that, and then the seven day would at least give
5 everyone a opportunity to say--you can say, "Well, he
6 did have a record, but I want to still hire him." But
7 then if you say no because he have a record, I don't
8 want to hire him, but then we want to see it in
9 writing, and then the human rights should be able to
10 look over it, or if that constituent say, "I feel I
11 just been discriminate, because I know aced that
12 interview, and all of a sudden as soon as they found
13 out that I had a record, then all of a sudden I'm not
14 the one that they thought I was because I had that
15 record and I didn't get the job." So, now we trying
16 to put something in place that we can make sure
17 employers be held accountable, at least that we will
18 know if they're kind of discriminated against. We
19 got a--it's black and white here, and it's America.
20 We don't want discrimination, but it is here. So,
21 therefore, I think this law--and I'm telling you
22 right now I got this opportunity. I was not on the
23 bill. I'm on the bill now. So I want to thank you
24 for adding my name to the bill. I wanted to get a
25 clear understanding so I know it's right now.

1
2 UNIDENTIFIED: So, understand that what
3 we were talking about was more litigation, and what
4 I'm saying--

5 CHAIRPERSON MEALY: [interposing] Even
6 though it's litigation, sometime it is necessary.
7 This young man just gave us a prime example where if
8 he didn't go to a lawyer he would not have been
9 employed, not just put legislation for the WEP
10 workers to get not just the little jobs, the city
11 jobs and everything else. If you want us to work,
12 you should give us the right job with the right pay.
13 So, I commend you, but everyone, like the pastor just
14 said, hundreds of thousands young men and women never
15 came back and got a job because they didn't know
16 their worth and knew that they had the power behind
17 them. This legislation will put that in place. So I
18 thank you for your testimony.

19 COUNCIL MEMBER WILLIAMS: Thank you, Madam
20 Chair for signing on. Thank you for what you're
21 saying, but I think a lot of what you're saying is
22 actually showing us why we need the bill. So, and
23 the people can sue now, as I said, they just--it's
24 hard to prove it. And I will say the credit check
25 and this bill, I think those are two segments of the

1
2 population that if you have bad credit and you have a
3 prior criminal history, you probably need the job
4 very bad, and those are the people that are
5 discriminated the most. So I think it's definitely a
6 place where we should interject to try to make sure
7 that's not happening. But thank you very much. I
8 appreciate your testimony.

9 CHAIRPERSON MEALY: Thank you, but we have
10 one more question, Ritchie Torres.

11 COUNCIL MEMBER TORRES: Thank you, Madam
12 Chair.

13 CHAIRPERSON MEALY: Pass if you want.

14 COUNCIL MEMBER TORRES: Is that a desire
15 or is that a--I'm sure you're not the only one who
16 feels that way in this room. I have a question for
17 Ms. Wylde. One of the concerns about the legislation
18 you mentioned, I think, was a lack of uniformity
19 across localities. Is that one of the--would you
20 support a state equivalent of Intro 318?

21 KATHRYN WYLDE: The--conceptually, most
22 of our employers are very comfortable with the state
23 of New Jersey bill which does most of what you're
24 talking about, I believe. I'm not sure if the
25 council has reviewed that or not.

1
2 COUNCIL MEMBER TORRES: Okay. But I guess
3 the bill as currently written. If I had a colleague
4 in the Assembly, in the state Senate who were to pass
5 a state equivalent, is that something you could see
6 yourself supporting?

7 KATHRYN WYLDE: No.

8 COUNCIL MEMBER TORRES: If that would
9 address the uniformity.

10 KATHRYN WYLDE: There are several
11 concerns. They tend to be nits, but there are
12 several concerns with the language in the
13 legislation.

14 COUNCIL MEMBER TORRES: SO you would
15 still oppose it?

16 KATHRYN WYLDE: We would ask the
17 legislature to consider employer concern about where
18 it's going to increase their liability or increase
19 their cost, or be problematic to implement. The
20 concept of the bill, eliminating a screening out of
21 people with a criminal record, we totally support.

22 COUNCIL MEMBER TORRES: And I take--I do
23 not take lightly the concerns about litigation, and
24 so I'm wondering. This has been a tried and tested
25 model in 60 counties. Have you studied the

1 implementation of ban the box elsewhere and has it
2 led to--has it opened the flood gates of litigation
3 for businesses? Have there been increased litigation
4 as a result of ban the box?
5

6 KATHRYN WYLDE: I don't think ban the box
7 is the problem. This proposal is, has specific
8 criteria that are different than any other
9 legislation. I mean it's not--this doesn't cookie
10 cutter with anything else, and as you know in
11 litigation, it's all in the details.

12 COUNCIL MEMBER TORRES: What are the
13 differences that are, I guess, between how we're
14 approaching it and how it's approached elsewhere?

15 KATHRYN WYLDE: Well, there are a number
16 of them. One is the seven day thing. One is the job
17 offer having to be made before criminal record is
18 disclosed, and I thought the point that was made
19 earlier about how an employee in a--how a perspective
20 employee in an interview explains a gap in their
21 career record. You're almost putting an applicant in
22 the position where they have to be dishonest. I'm
23 not sure how that works in an interview, but if an
24 employer says, "What was going on during these years
25 on your--that you don't have a record?" What's the

1
2 response to that that someone can make honestly? And
3 if they disclose they were incarcerated during that
4 period, then what happens with this system? That's
5 why it's, from an employer's stand point, this is so
6 prescriptive a legislation that it feels like it's
7 going to be very difficult on both sides to
8 implement.

9 COUNCIL MEMBER TORRES: I guess the
10 concern about the need for some level of prescription
11 I guess goes to the question of enforceability of
12 Article 23A.

13 KATHRYN WYLDE: Understood.

14 COUNCIL MEMBER TORRES: So how do we--
15 because my contention is that you can ban
16 discrimination without banning the box. So--

17 KATHRYN WYLDE: [interposing] I wouldn't
18 disagree with that.

19 COUNCIL MEMBER TORRES: Okay, so you
20 don't--

21 KATHRYN WYLDE: [interposing] No, no, we
22 don't disagree with that. The question is this
23 prescriptive procedure of seven days, that you have
24 to make a firm offer or you have to make a
25 conditional offer, you know, that's the process that

1
2 is very prescriptive and is different than
3 legislation that exists elsewhere.

4 COUNCIL MEMBER TORRES: What would be the
5 alternative that you would envision as ideal? What
6 would be a less, a more you know--

7 KATHRYN WYLDE: [interposing] And I think
8 it works better for everybody, is to allow people to
9 disclose during the interview their situation and
10 then make sure that there is an effort, much larger
11 effort to be sure that these candidates have support
12 from the community and that the employers have an
13 opportunity to be informed of their overall
14 performance in the community so that you can provide
15 more supports. I mean, I really think it's a larger
16 relationship. I think that this bill and banning the
17 box gives somebody a shot at the job, but a lot more
18 needs to be done to support this population. It's a
19 big problem, and I don't think the legislation alone
20 solves that.

21 COUNCIL MEMBER TORRES: No one is under
22 the illusion that this legislation that this a
23 substitute for broader reform. We see it as a
24 starting point, but you would want disclosure in the
25

1 course of the interview as opposed to after a
2 conditional offer of employment? I'm--

3 KATHRYN WYLDE: Whether it's in the course
4 or after the interview, but it--the question is the
5 prescriptive nature of the seven days and the job
6 interview and the--making a conditional job offer in
7 seven days and all that.

8 COUNCIL MEMBER TORRES: It just seems to
9 me that--because how do you isolate the effect of
10 discrimination from the effect of everything else?
11 You know, if you were willing to hire that person,
12 like that--

13 KATHRYN WYLDE: [interposing] No, you're
14 absolutely right.

15 COUNCIL MEMBER TORRES: That seems to be
16 a cleaner way to do it, so I don't know--

17 KATHRYN WYLDE: Usually do that through
18 patterns of behavior as the Council Member referenced
19 earlier, the bad actors. You usually do it through
20 patterns of behavior.

21 COUNCIL MEMBER TORRES: But I guess I'll
22 conclude with just with a comment. You know, what I
23 worry about is a permanently unemployable underclass.
24 It seems to me that for those who have criminal
25

1 records, those who were formerly incarcerated, or at
2 highest risk of structural unemployment, and
3 ultimately I feel that's bad for business because
4 that means greater--we're undermining their ability
5 to be self-sufficient. We're increasing government
6 dependency. We'll increase the taxes of businesses
7 to fund that dependency.
8

9 KATHRYN WYLDE: [interposing] We, we--

10 COUNCIL MEMBER TORRES: [interposing] And
11 so it seemed to me--

12 KATHRYN WYLDE: [interposing] We totally
13 agree with your position on that. We just don't
14 think the solution to this problem is a highly
15 prescriptive bill.

16 COUNCIL MEMBER TORRES: And I'd be
17 curious to hear more. My concern about the voluntary
18 approaches, that that would proceed at such a glacial
19 pace, that--

20 KATHRYN WYLDE: I wasn't suggesting that
21 as an alternative. I was suggesting a working
22 relationship where you took both where you had both
23 tracks going.

24 COUNCIL MEMBER TORRES: I see. And for
25 the sake of the audience and my colleagues, I will

1 not have anyone suffer any more of my questioning.

2 So, thank you.

3
4 COUNCIL MEMBER WILLIAMS: Hold one
5 second. I'm sorry. Please hold. Please hold. So
6 one, there was one thing that you said, I think that
7 I actually I want to think about and we heard
8 something similar that was if in the course of a
9 conversation, if an employer says explain the gap.
10 That may actually be a legitimate question, and it'd
11 be interesting to figure out how that would work, and
12 I want to make sure that we're not doing anything
13 that is unreasonable, and I think someone else had
14 mentioned what happens if an employee, a perspective
15 employee asks, "Will there be a background check?"
16 So, we do want to make sure that we're not changing
17 normal courses of conversation, so we're going to
18 take a lot of what it says--once it makes sense and
19 what we're saying is not based in kind of emotion of
20 what we think is going to happen, and we'll try to
21 take that into account. You mentioned patterns of
22 behaviors, how we--I believe you said patterns of
23 behaviors, how we deal with it, which I think is what
24 we're doing now. So, how else--that's how we got
25

1 here, because of the patterns of behavior. Is there
2 another suggestion that you would have?
3

4 KATHRYN WYLDE: Well, that was--the
5 question was, how do you identify bad actors and move
6 on enforcement efforts? And typically it's by
7 pattern, behavior patterns.

8 COUNCIL MEMBER WILLIAMS: I see. Well,
9 it's hard to do that when nobody gets a job when they
10 ask the question at the beginning, and there's no way
11 we can prove it. So, we do know something bad is
12 happening, although we can't point to the one or two
13 people that are doing it. But thanks again for the
14 testimony. I appreciate you all coming, and thank
15 you all. I appreciate it. I've been asked to step
16 in for--to fill in for a little bit. Hopefully, I do
17 a decent job. Next up, Viamay [sp?] Richardson-White
18 [sp?], Robin Richardson, Heather Garretson from
19 Researchers on Re-entry, Fernando Vega, New York Harm
20 Reduction Educators, Carl Stubbs, and Tani Mills from
21 Center for Employment Opportunities. Wait, I want to
22 make sure we have everybody. Is that everybody?
23 Viemai Richardson-White? Robin Richardson? Heather
24 Garreston? Carl Stubbs? Tani Mills? Did we call
25 your name? Okay, what's your name? Yeah, go down

1
2 over here. Okay. Thank you. You begin at whatever
3 side you would like to.

4 ROBIN RICHARDSON: Good morning, or good
5 afternoon, I think. The Sex Worker's Project at the
6 Urban Justice Center very much appreciates the
7 opportunity to speak in favor of the Fair Chance Act.
8 My name is Robin Richardson, and I'm an attorney at
9 the Sex Workers Project, the first and longest
10 running program in the nation dedicated to providing
11 direct legal and social services to sex workers and
12 survivors of human trafficking. With the funding of
13 Equal Justice Works, I provide legal assistance to
14 people with prostitution convictions who are seeking
15 employment in the formal economy. For my clients,
16 prostitution is often a part of a transitional period
17 in their lives. It is a means to support themselves
18 and their families until they can get their feet
19 under them, a way to escape from an abuser or a
20 safety net when they do not have others who they can
21 turn to for help. Many of my clients are victims of
22 human trafficking, and prostitution is an activity in
23 which they are forced to engage. Whether someone is
24 engaging in prostitution due to choice, circumstance
25 or coercion, those who are the most likely to be

1
2 criminalized for prostitution are often the most
3 vulnerable. In addition, many of my clients,
4 especially my transgender clients are falsely
5 profiled and arrested for prostitution just for
6 walking down the street. Because of the culture of
7 plea agreements, they often plead guilty. When my
8 clients, often with enormous effort, strength and
9 grace transition out of sex work their permanent
10 criminal record leaves them subject to stigma and
11 illegal criminal history based hiring discrimination.
12 A person's history of having done sex work is almost
13 never relative to their ability to do a job, but the
14 stigma attached to these convictions is such that
15 many of my clients have been turned away from jobs
16 once their criminal history comes to light. These
17 barriers to employment actually force people back
18 into prostitution when they cannot get a job in the
19 formal economy. Passing the Fair Chance Act would
20 make it much easier to determine when an employer is
21 discriminating against somebody based upon their
22 criminal history, and therefore creates an important
23 safeguard against illegal hiring discrimination. For
24 this reason, it is incumbent on this committee to
25 pass the Fair Chance Act. I would like to finish

1 with a story of one my clients who I'll call
2 Stephanie. Stephanie met a man in 2002. He offered
3 her help at a time when she had no one and he gained
4 her trust. Unfortunately, he turned out to be a
5 violent human trafficker. For nearly two years of
6 Stephanie's life, she was forced into prostitution in
7 cities across the country. During that time she
8 suffered horrific abuse at the hands of her
9 trafficker and by the criminal justice system where
10 she was arrested, convicted and incarcerated many
11 times with no offer of help. Unfortunately, even
12 after she escaped her trafficker, she was not able to
13 escape the criminal history that he had forced on
14 her. Although she was able to vacate her convictions
15 in New York using a law that's new that's for victims
16 of human trafficking, her criminal record extends to
17 states where no such laws exist, and as such, her
18 criminal record continues to plague her. Ten years
19 after escaping her trafficker, she has furthered her
20 education, obtained specialized job training and done
21 everything in her power to make herself competitive
22 in today's job market, and she's still denied
23 employment based on her criminal history. Most
24 recently was--
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CIVIL RIGHTS

COUNCIL MEMBER MILLER: [interposing] I'm going to have to ask you wrap up, please.

ROBIN RICHARDSON: in April 2014.

COUNCIL MEMBER MILLER: You can wrap up.

ROBIN RICHARDSON: Sorry?

COUNCIL MEMBER MILLER: You can make a closing statement and wrap up.

ROBIN RICHARDSON: Stephanie doesn't want special treatment. All she wants to do is get a job and support her family. My clients already face and overcome enormous obstacles every day. Being a former sex worker and survivor of trafficking should not bar them from a fair chance to compete for jobs.

COUNCIL MEMBER WILLIAMS: Thank you. I like your sign.

CARL STUBBS: My name--I'm saying--the reason I'm sitting [sic] is here, is because I'm not my record, you know. And I've been--stayed in prison twice. I have two felonies. And I want to just tell you, having these two felonies is not bad. And being black and having a felony, you don't get hired in New York, and I find that. I'm 63 years old, okay? I've been in prison. I came home in 1990.

1
2 COUNCIL MEMBER WILLIAMS: Please make
3 sure you mentioned your name also.

4 CARL STUBBS: My name is Carl Stubbs.
5 Okay. I'm from Vocal New York. I've been a part of
6 Vocal New York now for nine years. Okay. I'm here
7 for ban the box and getting it done because I don't
8 want the people to go through what I went through for
9 63 years of my life, okay. I've been in prison. I
10 came from prison with a job, okay. I felt good work
11 release working, taking care of my family, okay. Me
12 and my employment [sic] we're very well work. I work
13 for American Pre-sort for over two years, okay. I
14 worked at American Pre-sort under a tax reduction
15 that the state had out. They had also had a bonded
16 program. I was chosen for the tax reduction. They
17 was paying my employment in order to hire me [sic].
18 Okay? I worked for the program for two years, okay.
19 Time for me to come home, okay? I had a little
20 money. My employment wanted to keep me. He told me I
21 could not stay because the taxes ran out. So that
22 leaves me now, I go out and look for a job, always be
23 a letdown. I find myself I could not get no money.
24 Right now I live in a 700 dollar a month, right? I'm
25 living with HIV/AIDS and Hepatitis C, and I'm going

1 through this here process that's what I caught,
2 because I could not get a job. I could not take my
3 family. So I went back out in the street doing the
4 things that I didn't want to do to support my family.
5 And sometimes I think about that today. Like I said,
6 I hope they pass this act, because I don't want it to
7 happen to nobody else, especially my grandkids now.
8 Thank you.

10 COUNCIL MEMBER WILLIAMS: Thank you.

11 VIMAY RICHARDSON-WHITE: Good afternoon.

12 My name is Viamay [sp?] Richardson-White. I am a SI-
13 -I'm sorry, SEIU 32 BJ member. I have been a member
14 for 27 years working as a commercial office cleaner.
15 I am here today to speak about the importance of the
16 Fair Chance Act and why it is personally important to
17 me and my family. As a union member, I know just how
18 important it is to have a good quality job. Without
19 a good job and benefits, I don't know how I would
20 have been able to raise a family in New York City. I
21 fear that my daughter will not be able to do the
22 same. My daughter has a criminal record. In 2004
23 she was convicted of a drug charge and was released
24 from prison in 2009. Since coming home, she started
25 going to school to become a medical assistant, but

1
2 her advisor told her she would not be able to get a
3 job as a medical assistant because of her criminal
4 background. So my daughter dropped out of the
5 program. Recently, she lost her job working in a
6 warehouse because of her criminal record. She has
7 applied for lots of jobs, but the only people call
8 her back are employers that offer low paying wages,
9 seasonal jobs. This has a big impact, a big effect
10 on my daughter as after getting let go she fell into
11 a deep depression. When she came over for
12 Thanksgiving, I got to see just how big this impact
13 was--how big a impact this was having on her. She
14 recently felt like there's no room for her to rebuild
15 her life and become a--excuse me.

16 COUNCIL MEMBER MILLER: It's okay. Take
17 your time.

18 VIAMAY RICHARDSON-WHITE: A contributing
19 member to her community. She feels like she has no
20 more options left, but she does not want to return
21 back to crime or depend on public assistance. My
22 daughter has a lot to offer to the world. Employers
23 should see her for who she is and not label her for
24 the felon before she got her chance to show--before
25 she gets her chance to show what she has to offer.

1
2 As a mother, it breaks my heart to see my daughter
3 living like this. She does not live in New York
4 anymore. She lives Schenectady, and I know that this
5 law will not help her get a job outside of the city,
6 but I know that New York City can lead in the state,
7 and if New York pass this law here, other towns and
8 cities will do the same. I urge you to take on the
9 leadership role and pass this Fair Act law now.

10 COUNCIL MEMBER MILLER: Thank you for
11 sharing that.

12 HEATHER GARRETSON: Good afternoon. My
13 name is Heather Garretson, and I appreciate the
14 opportunity to speak on the importance of the Fair
15 Chance Act. This act ensures that qualified
16 applicants for a job in New York City will be
17 considered for the job based on their potential and
18 not their past. As part of my research as a law
19 professor, I sit across from people with criminal
20 histories, and I listen to what's happened to them
21 since they have come home, and this is what I hear:
22 "I need a job." Here's an example of someone whose
23 life might have been changed had the Fair Chance Act
24 been law when he came home. This is a guy who's been
25 in and out of prison since his teens, and after his

1
2 most recently release he had nowhere to go so he
3 lived in a shelter, which was his plan until he got a
4 job to split an apartment with a friend. He spent 13
5 months applying for jobs and 13 months hearing no.
6 At one point he told me he considered going back to
7 prison because it would be better than living the
8 life he was leading, which was "no" and shelters. He
9 finally was given the chance. He got a job cleaning
10 buses. He arrived at work every day an hour early,
11 which was an hour before the garage even opened. He
12 stayed busy for six months cleaning the buses,
13 working overtime and doing extra work around the
14 garage. He was promoted. He was eventually given
15 the job of opening the garage. He now makes enough
16 money to split an apartment, and he's taking his
17 commercial driver's license test. He's succeeding
18 because he was given a fair chance. The hard thing
19 about doing the research that I do in this area is
20 that you meet people who leave the system full of
21 hope. They come home with skills and plans and
22 promise, and all of that slowly leaks out with every
23 "no" that they hear from potential employers. One in
24 three adults in New York has a criminal record and
25 that is a problem, but being unemployable for life

1 due to that problem is worse for society and the
2 individual. We know that access to employment helps
3 reduce recidivism, and that benefits society as a
4 whole, including its bottom line since it costs over
5 60,000 dollars a year to incarcerate someone in New
6 York. Research shows that reduced recidivism
7 increases community safety, prevents future victims
8 and strengthens family. Recidivism decreases when
9 opportunity increases. This act gives people an
10 opportunity for a job. Jobs give purpose and income
11 and hope, and that's more than fair.

13 FERNANDO VEGA: Good afternoon. My name
14 is Fernando Vega, and I am in training to become a
15 peer outreach worker at New York Harm Reduction
16 Educators, NYHRE. NYHRE's the largest and one of the
17 oldest syringe exchange programs in New York, with
18 over 5,000 participants in the Bronx and East Harlem.
19 I'm here today to give my personal support and our
20 organizational support for Intro 318, referred to as
21 the Fair Chance Act. New York needs the Fair Chance
22 Act because formerly incarcerated individuals like
23 myself often have a difficult time finding
24 employment. I was convicted of a felony in 1993, and
25 I was incarcerated until 2002. I struggled to find

1 work after I was released. No one wanted to hire
2 someone with a record. In 2005, my daughter was
3 born, and I knew I had to whatever I could to provide
4 for her, but I also knew that I needed to stay out of
5 jail to be there for her. I applied for a job at
6 JCPenney in the Queens Boulevard Mall, and when I saw
7 the question asking about my background, I decided
8 not to disclose my record. I was worried that if they
9 saw my record they would not hire me. I thought that
10 if I show I was a good worker and responsible, they
11 would keep me on even after they found out about my
12 past. I was hired as a supervisor with six people
13 working under me. For three weeks I had a good job
14 making good money and I felt good about myself.
15 Unfortunately, my background check results came in
16 and I was told that even though I am a good worker
17 they had to let me go. The Fair Chance Act would
18 have helped me stay in the job and provide for my
19 daughter. I know I have made mistakes in the past,
20 but I did my time and I'm trying to be a better
21 person and a good father. How can anyone improve
22 their lives when they are locked out of the job
23 market? The Fair Chance Act is common sense
24 legislation that will not force employers to hire
25

1 anyone that is unqualified. This Intro will also not
2 change current laws that prevent people with certain
3 serious convictions from working in schools, daycares
4 or other positions. There is no reason my criminal
5 history should prevent me from working at a mall. I
6 urge you to vote in favor of Intro 318 to ensure that
7 formerly incarcerated New Yorkers are able to find
8 employment and improve our lives and the lives of our
9 families. Thank you very much for your valuable time
10 and consideration.
11

12 CHAIRPERSON MEALY: Thank you.

13 TANI MILLS: Hi, good afternoon. I'd
14 like to take this opportunity to thank the Chairwoman
15 Mealy and the Committee on Civil Rights and the
16 sponsors of this act for the opportunity to testify
17 today. My name is Tani Mills. I'm here on behalf of
18 the Center for Employment Opportunities known as CEO,
19 an organization that provides immediate, effective
20 and a comprehensive employment services exclusively
21 to men and women with criminal records. Since our
22 inception in 1996, CEO has placed over 17,000
23 individuals in fulltime employment in New York City.
24 Finding a job moves people away from criminal
25 activity and lessens our society's overall dependence

1 on incarceration. CEO has proven this, our programs
2 of transitional work, full time job placement and job
3 retention have produced significant reductions and
4 arrests, and convictions and incarceration. CEO
5 commends the committee and the sponsors for
6 understanding the connection between work, poverty
7 and crime. This legislation offers individuals with
8 criminal histories employment opportunities based
9 upon their merit and work suitability after they have
10 paid their debt to society. It has been our
11 experience that individuals who enroll in our
12 services have made a commitment to themselves and
13 those they love. They want to turn their lives
14 around. They are hopeful that their future is bright
15 and is based on the tenants of redemption and
16 fairness, that when looking for a job they will be
17 judged not on the poor choices of their past, but on
18 their skills experience and seen as a viable
19 contributors to the employer's bottom line. That
20 said, this legislation offers employers an
21 opportunity to hire the best person for the job
22 without prejudice and unfounded biases. We have had
23 many instances where once an individual demonstrates
24 that he is the perfect fit for the employer, the
25

1
2 employer will ask us to identify additional
3 candidates for the consideration. CEO, as an
4 intermediary, has tirelessly built relationships with
5 hundreds of small businesses in New York City,
6 filling the human resources needs with motivated and
7 skilled individuals. Although we are proud of our
8 success and serve thousands of individuals each year,
9 that still only represents a small fraction of
10 individuals who are released into the community each
11 year from the criminal justice system looking for
12 work. It also does not take in consideration people
13 who have successfully completed our program and are
14 looking for their next job opportunity nor the
15 countless others who are looking for wife without an
16 intermediary like CEO. Research has proven that
17 individuals with criminal history and who are now
18 gainfully employed are less likely to return to
19 prison. Moreover, formerly incarcerated individuals
20 who are working force to public safety build stronger
21 communities and become tax paying citizens.
22 Affording individuals an equal opportunity to apply
23 and be considered for employment should not be a
24 privilege. The stigma of incarceration should not
25 limit someone who wants a job and provide basic needs

1
2 for themselves and their family. This country was
3 built on second chances and equal opportunity, and
4 that is what this legislation is all about. We
5 applaud the committee and the sponsors for proposing
6 the Fair Chance Act and thank you for your time and
7 privilege to speak today.

8 CHAIRPERSON MEALY: Thank you so much.

9 COUNCIL MEMBER WILLIAMS: Thank you for
10 your testimony. I just wanted to particularly thank
11 people who came to give personal testimony. Sir, Mr.
12 Vega, thank you for what you said. We didn't mention
13 actually that one of the good things about this bill
14 is we'll also cover people who are currently
15 employed. So we have protected you and I'm sorry we
16 didn't have it before, but thank you for sharing
17 that. And Ms. White, I'm sorry to hear about what
18 your daughter is going through. Please tell her we
19 are trying to make sure that she does have room.
20 We're trying to make that room a lot bigger as we go
21 forward. So, we hear her and we hear all of you who
22 came to give your testimony, and we're really trying
23 to make it a better place to make sure people are not
24 their records. So, thank you very much.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRPERSON MEALY: And I thank you also. I didn't think about the ones employed right now. Our next panel, Susan Samuel, and we do have an important meeting that we're supposed to be at right now, but my colleague, he's going to go to that meeting. Please, both of them are very important, but I believe he needs to be there. So thank you for your time. I know you could have-- Sebastian Samuel--Solomon, Molly Kovel, Angelina, Janet Corles [sp?], Encie Pearson [sp?], please come to the table. You may start. We have three minutes each one. Please make it brief. I will--

SUSAN SAMUEL: Hi, good afternoon. My name is Susan Samuel. As I actually was preparing my testimony this morning, I kind of came upon this. I just wanted to just read this quickly. When Jesus was faced with a mob that was eager to execute a woman that was caught in adultery, he put a stop to it for simple challenge. Anyone who has not sinned in their life should step forward and throw the first stone. That sentence is often cited as a reminder to avoid judging others when there are faults in their own life that need to be addressed, and I think

1
2 that's poignantly when we're dealing with talking
3 about a fair chance--

4 CHAIRPERSON MEALY: [interposing] Yes.

5 SUSAN SAMUEL: in Intro 318. As a
6 business owner of New York's only 24-hour childcare,
7 It Takes a Community to Raise a Child, which is a
8 citywide agency for over eight years throughout the
9 city, I have firsthand experience with hiring
10 practices, especially as jobs that are higher require
11 extra scrutiny in childcare. It should also be noted
12 that although childcare requires for extra--although
13 childcare requires extra scrutiny, once a individual
14 let it be known that there are criminal convictions,
15 they're still not turned away immediately. Based on
16 the nature of their crime, they're also taken into
17 consideration how old is the crime before final
18 determination of employment is made. So even within
19 childcare, although there's also scrutiny, they also
20 look at the whole situation before they turn that
21 individual away. Existing law requires that my
22 employees be screened, but I'm still testifying in
23 support of the bill, because Intro 318, the Fair
24 Chance Act, will not change the rules for my
25 employees as existing laws already require this

1
2 check, but the bill will ensure that for positions
3 that local, state and federal laws already does not
4 require a check, that it be done later in the process
5 so that applicants have a fair chance. And also,
6 that is important to ensure that felonies and other
7 convictions that are 10 years over and misdemeanors
8 that are older than five years be off limits so that
9 older crimes, you know that a person have less chance
10 of a return in engaging in criminal activity. Thank
11 you.

12 CHAIRPERSON MEALY: Thank you. Could I
13 just get a clarification? You said less than--it
14 should be five years?

15 SUSAN SAMUEL: Yes, misdemeanors that are
16 five years and felonies that are older than 10 years.

17 CHAIRPERSON MEALY: Okay, thank you.
18 Okay, that's what we have. Anyone, just take a mic.
19 Sing.

20 MOLLY KOVEL: Good afternoon. My name is
21 Molly Kovel, and I'm the Legal Director of the Bronx
22 Defenders Civil Action Practice. My work is focused
23 on the civil rights and employment of people with
24 criminal records. And founded in 1997, the Bronx
25 Defenders provides holistic civil, criminal and

1 family legal services to over 35,000 low income
2 families in the Bronx every year. I submit these
3 comments on behalf the Bronx Defenders and thank the
4 City Council for the opportunity to testify and to
5 lend our enthusiastic support for Intro 318, the Fair
6 Chance Act. In my career, I have trained dozens of
7 attorneys and workforce developers and hundreds of
8 community members regarding employment and criminal
9 records. Every client I meet inevitably asks me
10 about what to do about the question, right? They
11 refer to the, you know, do you have criminal
12 convictions question that appears on a majority of
13 the applications that they are filing out. As you
14 will hear--as you have heard a lot today, this
15 stressful question has been an intractable barrier to
16 thousands of people with criminal records applying
17 for work, and the Fair Chance Act will help these
18 people access stable employment without putting
19 employers at risk because employers will still get to
20 do background checks and the fundamental contours of
21 Article 23A are unchanged. I wanted to focus today on
22 a few particular elements of the Fair Chance Act that
23 have otherwise been overlooked. First, I wanted to
24 address the major problem of criminal record errors.
25

1
2 In our experience in the Bronx, one in three official
3 fingerprint based rap sheets have a significant
4 serious error on them. Mostly dismissed cases--

5 SERGEANT AT ARMS: Quiet please.

6 MOLLY KOVEL: Dismissed cases and
7 violation level convictions that should have been
8 sealed. These errors in an official rap sheet
9 context are compounded and multiplied in private
10 background checks that are obtained from unofficial
11 sources by private employers. People who have errors
12 on their rap sheet may not even know that a criminal
13 record will show up on their background check.

14 Indeed, their defense attorneys advise them at the
15 conclusion of their criminal cases that they would
16 have no criminal record. When these people apply for
17 jobs, they often answer no to the question, "Have you
18 ever been convicted of a crime?" The Fair Chance Act
19 will protect this group. Subsection B of the law
20 provides that an employer must give the applicant the
21 chance to review their background check for any
22 errors. In my experience this practice almost never
23 occurs currently, and people who do not in fact have
24 any convictions are denied work because of errors in
25 their record. The Fair Chance Act is simple, and

1
2 because the review of background check occurs after
3 the interview when the applicant has had a chance to
4 establish a report with the employer, they--we will
5 precluding discrimination based on errors through the
6 Fair Chance Act. The seven day waiting period may
7 seem long to employers, but in my very extensive
8 experience correcting criminal record errors, seven
9 days is a bare minimum necessary to do so. And I'm
10 not going to be able to finish my remarks, but I do
11 have several also regarding the current employees
12 provision of the Fair Chance Act in Subsection A1.
13 Subsection A1 of the bill that protects current
14 employees, my colleague Bob Newman from the Legal Aid
15 Society also addressed this today.

16 CHAIRPERSON MEALY: Thank you. I really
17 need that for myself. Thank you.

18 SEBASTIAN SOLOMON: Good afternoon.
19 Sorry. Good afternoon. My name is Sebastian Solomon.
20 I'm a Policy Associate at the Legal Action Center.
21 The Legal Action Center is the only public interest
22 law and policy organization whose sole mission is to
23 fight discrimination against and protect the privacy
24 of people in recovery from drug dependence or
25 alcoholism, individuals living with HIV and AIDS and

1 people with criminal records. In New York State we
2 also work closely with the Coalition of Alternative
3 to Incarceration Re-entry and Related Pogroms. We
4 present these comments on behalf of the ATI and Re-
5 entry Coalition. The proposed legislation not only
6 increases fairness, it also improves public safety by
7 increasing the access to employment and other
8 societal benefits for these individuals. Time and
9 again, research has demonstrated that a key factor in
10 preventing recidivism is access to employment. The
11 proposed legislation concerns how and when employers
12 are able to ask individuals about their criminal
13 record and run background checks. Despite what many
14 people say or believe, this legislation does not
15 prevent an employer from asking about a criminal
16 record or running a background check. It merely
17 delays when the question is asked in order to ensure
18 that individuals are not judged solely on the basis
19 of their criminal record. This legislation is
20 necessary because as noted by the Equal Employment
21 Opportunity Commission in its 2012 guidance, an
22 employer is more likely to objectively assess the
23 relevance of an applicant's conviction if it becomes
24 known when the employer is already knowledgeable
25

1 about the applicant's qualification and experience.

2 As has been mentioned before, many states, cities and
3 corporations have already adopted some version of ban
4 the box. New York City already restricts the timing
5 of questions about an individual's criminal record on
6 applications for most municipal jobs under Mayor
7 Bloomberg's Executive Order. However, most
8 individuals are not applying for municipal jobs.

9 They are applying for jobs in the private sector and
10 so are not impacted by this order. Furthermore, the
11 proposed legislation provides many other protections
12 not provided by the Executive Order. The order does
13 not require that individuals be given a clear
14 explanation for why they were denied a job as they
15 are entitled to under Article 23A of the Correction
16 Law. It does not provide the same clarity about what
17 kinds of inquiries and background checks must be
18 delayed, nor does it delay these elements until after
19 a conditional offer has been made. Additionally, the
20 proposed legislation ensures that an individual is
21 given a proper [sic] opportunity to challenge
22 incorrect information on a background check. Such a
23 requirement already exists under the Fair Federal
24 Credit Reporting Act, however, this bill provides
25

1 much greater clarity for defining the reasonable time
2 period required by the federal law. Lastly, the
3 proposal limits how far back employers can go in
4 considering criminal record information. This
5 essential element recognizes that the best predictor
6 of whether an individual will commit a crime is the
7 fact that he or she has recently committed a crime.
8 New York City and State already have some of the
9 strongest most progressive protections against
10 discrimination based on a criminal record. However,
11 these laws have not been proven sufficient to
12 preventing discrimination against individuals with
13 criminal records. And I'll just sort of jump to the
14 end. Demonstrating the reason an individual is
15 denied a job because of their criminal record can be
16 very difficult as employers often deny that this is
17 the reason for the decision, and it can be extremely
18 challenging to prove otherwise. To be clear, the
19 Council's proposal will not prevent employers from
20 refusing to hire someone because of their criminal
21 record, it will simply make it easier to ensure that
22 their reason for doing so are legal under state and
23 city law.
24

1
2 CHAIRPERSON MEALY: Sir, what's--could you
3 state your name again?

4 SEBASTIAN SOLOMON: Sorry. Sebastian
5 Solomon.

6 CHAIRPERSON MEALY: Solomon, okay, thank
7 you.

8 ANNIE GARNEVA: Good afternoon. My name
9 is Annie Garneva. I am the Policy and Communications
10 Associate for the New York City Employment and
11 Training Coalition. The coalition is an association
12 of over 200 community based organizations,
13 educational institutions and labor unions that
14 annually provide job training and employment services
15 to over 750,000 New Yorkers including public
16 assistance recipients, unemployed workers, low wage
17 workers, at risk youth, individuals involved with
18 criminal justice system, immigrants, and the mentally
19 and physically disabled. The coalition's the only
20 citywide association exclusively focused on workforce
21 development and represent a significant constituency
22 of the city. Stable employment is one of the most
23 effective ways of preventing recidivism among
24 individuals involved with the criminal justice system
25 and lowering rates of criminal activity. Formerly

1 stuck between a rock and a hard place when attempting
2 to seek employers who will give a fair chance and
3 opportunity to all applicants, including those with a
4 history with the criminal justice system. Hoping
5 employers find the strongest fit for their workforce
6 is a fundamental part of the workforce providers.
7 Employers who automatically eliminate prospective
8 hires without a real and honest consideration of
9 their skills, abilities and attributes lose out on a
10 resource that could strengthen their business even as
11 they offer meaningful opportunities to formerly
12 incarcerated men and women. This means that passage
13 of the Fair Chance Act would not only help job
14 seekers who face discrimination, but would also help
15 employers and workforce service providers better fill
16 their staffing needs with the most qualified and
17 skilled individuals. Thank you for this opportunity.

18
19 CHAIRPERSON MEALY: Thank you.

20 JANELLE CORLES: Thank you, Chairwoman
21 Mealy for providing me this opportunity to testify
22 today. My name is Janelle Corles [sp?], and I am the
23 Legislative Manager for the New York Working
24 Families. We are a growing political organization
25 that fights for an economy that works for all of us

1
2 by running aggressive campaigns to raise standards
3 for all working families while electing the next
4 generation of progressive leaders. Working Families
5 fully supports the effort to enact the Fair Chance
6 Act in New York City. This is a question of both
7 racial and economic justice. People of color are
8 disproportionately impacted by mass incarceration and
9 the prison industrial complex more broadly. While
10 all New Yorkers face an unemployment crisis, only 47
11 percent of working age Americans currently have full
12 time jobs with black unemployment still nearly double
13 that of whites, and I think that's true of Latinos as
14 well. The Fair Chance Act levels the playing field
15 for employment by disallowing questions about
16 applicant's prior criminal histories ahead of a
17 preliminary offer, the bill could eliminate some of
18 the racial and ethnic discrimination people with
19 criminal records persistently face. This is not an
20 issue just of individual fairness. Job barriers
21 bleed out local economies while undermining the
22 wellbeing of communities. Inevitably, tax payers
23 wind up subsidizing people who face structural
24 barriers to employment as they are often forced onto
25 public assistance programs. Let's provide re-imprint

1 [sic] populations the opportunity to fully contribute
2 to the building of a sustained tax base where they
3 live. We know that increasing access to decent
4 employment is paramount to not only improving lives,
5 but cutting recidivism and stabilizing communities
6 that are impacted by mass incarceration. A strong
7 private sector ban the box law adds to the growing
8 movement nationally to address biased policies that
9 lead to mass incarceration. As it stands today, 13
10 states and as highlighted by Tsedeye Gebreselassie
11 today from NELP, it's upwards of 90 cities and
12 counties that have enacted legislation to ban the
13 box. We say that it's time to end the contradictory
14 catch-22 that criminal record holders need to
15 rehabilitate themselves by placing obstacles at every
16 turn that they face. Therefore, we strongly urge
17 this committee to pass the Fair Chance Act to ensure
18 that those who are qualified have a chance to show
19 that they're qualified. Thank you.

21 CHAIRPERSON MEALY: Thank you.

22 NONO PEARSON: Good afternoon. My name is
23 Doctor Nono C. Pearson. I'm the founder and CEO of
24 United Vision Marketing Firm. The Fair Chance Act to
25 me is something that's personal that is something

1 that I hold dear to my personal life story. I was
2 once an at-risk youth. I was a high school dropout,
3 and I was told I wasn't going to be anything. Today,
4 my company has been featured in the Forbes World's
5 Billionaire's List. So what I'm really looking at
6 and what I'm faced with and the challenges that I'm
7 faced with are some of the main challenges that many
8 CEO's of America are faced with. Over 93 percent of
9 the CEO's, according to the Chief Executive Magazine,
10 is faced with a talent problem. They can't find top
11 talent, don't know how to retain the top talent or
12 attract the top talent, but the big reality of that
13 is, is that most of their talent is either in prison
14 or have once been in prison. And the other big
15 reality of it is, is that because they can get
16 contracts with prisons and pay them cheaper to work
17 while they're in prison, then the challenge of
18 actually passing this Fair Chance Act and actually
19 paying them a fair wage and giving them a fair chance
20 is not really on their agenda. So, the 61 percent of
21 the CEO's said that they haven't even taken the first
22 step to making the change in their hiring process for
23 top talent, and we know why that is, because that
24 means that we have to let some people that we have
25

1 shut out. And so what we try to do in United Vision
2 Marketing Firm is that we try to deal with people--
3 the prisoners coming straight out of prison. I've
4 dealt with some prisoners that's come and got out of
5 the federal prison. Also, on my Board of Directors
6 is the real freeway [sic] Rick Ross who was convicted
7 of being a notorious drug dealer who served over 20
8 years, and they had equated his life story to being,
9 having the same mindset as the CEO of Coca-Cola. He
10 built the company over to--he built his underground
11 business of a illegal operation to a billion dollars
12 almost. But now after serving 20 years, he probably
13 couldn't get a marketing job at McDonald's. And so
14 that's where there are top talent, and that's why I'm
15 for this. So I hope that we can pass the Fair Chance
16 Act. Thank you.

18 CHAIRPERSON MEALY: Thank you. I see you
19 Madison Avenue, too. Fair Act--I want to thank--one
20 thing I wanted to ask, do you think this legislation
21 go far enough?

22 NONO PEARSON: No, I don't think. I think
23 we could do much more.

24

25

1
2 CHAIRPERSON MEALY: What do you think we
3 should put in a little bit more to make it stronger?
4 What, do you have a idea?

5 NONO PEARSON: I mean, I'm--one of the
6 things I think, the reality of it is is that how I
7 feel, is that we know that we can't take and ex-sex
8 offender and put him over children or her over
9 children. So, I think that the thing is that we do
10 have to put something in there that's going to make
11 sure that maybe the person that has come out of the
12 prison system have proven some type of way that
13 they've changed their behavior some type of, you
14 know, measures that we go into their past since
15 they've been out of prison or something to show that
16 what they're doing is showing that they are
17 correcting their behavior. Because not everybody's
18 going to correct their behavior once, just because
19 they're released from prison and looking for a job.
20 So I think that, you know, it has to be balanced, of
21 course, is what I feel.

22 CHAIRPERSON MEALY: I think about the
23 certificate of release also, and I just heard
24 somebody testify while they were in jail they were
25 making 17 cents.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NONO PEARSON: Right.

CHAIRPERSON MEALY: You know, a hour.

Maybe we have to start thinking about that also to get them prepared for when they come out. Seventeen cents is nothing, even though they did--and if they n a certain program, maybe we should have to think about having programs in the jails that once they come out they already on the road. So, I thank you all for your test--you have a question?

SEBASTIAN SOLOMON: One concern I have is just that once employers get access to the criminal record eventually, if they get that--if the person gets that far, is that they don't then go around sharing that information with others. And I feel like some bills I've heard of have tried to include some kind of protection against that. I think New Haven may have done something like that. To me, that would be sensible--

CHAIRPERSON MEALY: [interposing]

Something that we should put in there also you saying. That once the employer do find out about the employer record that he tells others in the office or--

SEBASTIAN SOLOMON: [interposing]

Absolutely. If people live in the community and they all live in the same community and then they go around telling others that could be used against the person in other ways.

CHAIRPERSON MEALY: Thank you. That's something we'll look at also.

SEBASTIAN SOLOMON: Yes.

CHAIRPERSON MEALY: Definitely. Thank you, see. Thank you so much panel. We have our last panel coming up. Thank you so much. Dwayne Andrews, Johnathon Perez [sic], Barry Cambell, Sarah Abeli [sic], Nancy Hedge [sp?], MCC, Wesley Cranes--Panes [sp?]. As I stated before, pull up the mic. Do we still have--did we miss--Websley Cra--Wesley, Nancy Hedge, Sarah Abla, Barry Cambell, Johnathon Mendez--Perez, sorry, and Dwayne Andrews. So we're going to have one more, Kimberly Howard. Alrighty, that's our last panel. Start singing if you like.

DWAYNE ANDREWS: Good afternoon, Chair Mealy. My name is Dwayne Andrews. I'm a partner at the law firm Cozen O'Connor, and I'm here testifying on behalf of our client, AlliedBarton Security Services, the largest single provider of security

1 services in New York. I'm here to testify in favor
2 of making certain modifications to the Fair Chance
3 Act as it relates to the employment of security
4 officers, supervisors and management personnel. As
5 the largest American-owned and managed security
6 company in the US and largest provider of services in
7 New York City, AlliedBarton is proud to secure the
8 runways at JFK, LaGuardia Airports, the World Trade
9 Center construction zone, the Staten Island Ferry,
10 the MTA, including the new Fulton Transportation
11 Center and over 20 city agencies, including the
12 Mayor's Office. AlliedBarton also secures many
13 prominent commercial buildings in New York City such
14 as the City Tower and the Axa [sic] Equitable
15 Building. AlliedBarton prides itself in selecting top
16 talent to secure its locations and strictly adheres
17 to the New York state laws governing the licensure of
18 security officers, supervisors and managers. The
19 basis of this testimony stems directly from the New
20 York State laws and the Security Guard Act as they
21 relate to the subject of this hearing. First, I'd
22 like to call attention to the New York State
23 licensing law governing security licensure, Section
24 89.G.3 states no security guard company shall
25

1 knowingly employ to perform security guard functions
2 any individual who has been convicted of a serious
3 offense or any misdemeanor in the state which bears
4 such relationship to the performance of the duties of
5 the security guard. The law also lists over 35
6 felonies classed as serious offenses which are
7 committed by an applicant strictly prohibit the
8 applicant from being employed as a security guard by
9 any security company. Lastly, the law states that
10 the security guard companies must certify that they
11 have exercised due diligence to verify as true the
12 information contained in the person's application.
13 Based on the Security Guard Act, therefore, companies
14 are prohibited from hiring convicted felons who have
15 committed one of the long lists of serious offenses.
16 Because of this stipulation, security guard companies
17 must ask applicants on the application if they were
18 ever convicted of a felony. The benefit of having
19 this question remain on the application is that it
20 will constitute a written record by the applicant and
21 is preferable as compared to being asked during an
22 interview, which can be misinterpreted. It should
23 also be noted that the state law does not specify a
24 time period in which security guard companies should
25

1
2 consider for felonies or misdemeanors. Therefore,
3 Section 10A subsection two of the Fair Chance Act is
4 not applicable for security guard applicants. The
5 Fair Chance Act requirement that the position be kept
6 open for seven days would also not apply since
7 security guard companies are not able to hire serious
8 offenders. In order to eliminate any
9 misinterpretation of this act once enacted, we
10 respectfully request that a similar clause to the New
11 Jersey law be added which lists a few exemptions to
12 the act specifically law enforcement, corrections,
13 the judiciary homeland security, emergency management
14 and security personnel. Thank you very much for your
15 time.

16 CHAIRPERSON MEALY: I think we do have--

17 DWAYNE ANDREWS: [interposing] Well, the-

18 -

19 CHAIRPERSON MEALY: the New York State
20 Security Act.

21 JOHNATHAN JIMENEZ: Hello. Hi, my name
22 is Johnathan Jimenez. Thank you for having me
23 testify. I'm a fourth year medical student at the
24 Icahn School of Medicine in Mount Sinai and a
25 Master's in Public Health student at Columbia

1 University, and today I'm testifying to support the
2 Fair Chance Act, not just as a medical student and a
3 soon to be physician, but also as a family member. My
4 cousin, who I grew up with like brothers, was
5 convicted of a crime early in his life, and after he
6 served his time it seemed that he had also been
7 sentenced to a life without employment. This act
8 could have given him a second chance at a stable life
9 with his family. And as a future physician, I also
10 support the law because I know that it will improve
11 the health of New York City. One of the strongest
12 predictors of health outcomes is adverse childhood
13 experiences, which includes a parent going to prison.
14 So, keeping people employed and with their families
15 and out of prison will improve the public health of
16 New York City. Additionally, as the Vera Institute
17 report recently showed, going to prison itself is a
18 health risk, and so keeping people out of prison for
19 their own health is also an opportunity to improve
20 people's health and the health of families in New
21 York City. Furthermore, I don't support any
22 exemptions to the law, since as many have mentioned
23 already, state and federal law already provide
24 exemptions for certain positions, and within the
25

1 healthcare system, the John Hopkins Hospital and
2 Health System has already taken the lead on hiring
3 formerly incarcerated residents, and in 2009 actually
4 showed that their formerly incarcerated employees had
5 lower turnover rates and higher productivity. Kaizer
6 Permanente in California, the largest healthcare
7 employer there has also showed similar results and
8 patient safety has not been compromised at either of
9 these institutions. The results are not surprising
10 either since we know that it is bias against people
11 of color and poor people that are driving
12 incarceration. Fifty percent of people incarcerated
13 are people convicted of drug offenses and many
14 reports have shown, including one recently by the
15 Brook [sic] Institution that black residents are more
16 likely to be convicted of drug offenses even though
17 white residents are just as likely to use drugs and
18 even sell drugs. So, it is therefore one point that
19 I would like to make is that within the system now,
20 employees, it's not true that people who currently
21 have jobs haven't committed crimes, right? And in
22 fact, this is just a way for people that want to have
23 the opportunity to work to have a job, and none of
24 them have ever been shown to have an effect on
25

1 patient safety within the healthcare system. So, I
2 urge you to support this law.

3
4 CHAIRPERSON MEALY: Thank you so much.
5 Our next panelist?

6 SARAH ALBA: Good afternoon. My name's
7 Sarah Alba, and I'm a Staff Attorney with Manhattan
8 Legal Services. I submitted--

9 CHAIRPERSON MEALY: [interposing] Say your
10 name again, please?

11 SARAH ALBA: Sarah Alba. Sorry, I have
12 very messy handwriting, that's why you couldn't read
13 it. I submitted more detailed written testimony, but
14 I'm just going to focus on a couple of stories today
15 that illustrate the problems that we're seeing as
16 legal services providers. What we know is that for
17 our clients, getting a job is a crucial step if they
18 have a criminal record to re-enter their families and
19 re-enter their communities, and our clients with
20 criminal records have a lot of trouble getting a job.
21 And this applies to people with every type of
22 background, including old and low level convictions,
23 such as those that are targeting this act. And one
24 example is one of our recent clients who applied for
25 a license through the Department of Health after an

1
2 elderly man he was working with needed a licensed aid
3 and wanted him to be that aid. He liked working with
4 him. He wanted him to keep working with him and
5 asked him to apply for a license. So, Mr.--I'm going
6 to call him Mr. Z. He openly disclosed his one
7 conviction for an 11 year old misdemeanor in his
8 application. Since that conviction he's worked
9 continuously. He's held many positions working with
10 elderly people. He worked to obtain a certificate
11 from the New York State Department of Education to be
12 a home health aide, but still the Department of
13 Health denied him that license based on his 11 year
14 old conviction. So he not only lost out the
15 opportunity to continue working with the client, but
16 the client lost the opportunity to work with the home
17 health aide that he liked. And another major problem
18 that our clients face is knowing why they were denied
19 a job and whether it was related to their
20 convictions. In licensing applications often they'll
21 be told directly, but employers don't always follow
22 that. As current law stands, it's very difficult for
23 our clients with criminal convictions to protect
24 their rights, and a common example is a client I'll
25 call Mr. U, who worked in maintenance for years

1 before he was laid off from his job in 2013. He has
2 one 20 year old felony conviction, but in the time
3 since the conviction he's worked continuously. He
4 received a certificate of relief from disabilities.
5 He received many job related certificates. He
6 recently went on a first and then a second interview
7 with a large hospital and openly disclosed his
8 conviction during the second interview. The second
9 interview lasted for three hours. Mr. U was
10 introduced to future colleagues, given a tour, asked
11 when he could start. He basically saw it as being an
12 orientation, so he was really shocked when he was
13 told a week later that he was not going to be given
14 the job, and then he faced a really frustrating
15 process that's not uncommon for our clients. One
16 employee of the hospital told him that he wasn't
17 hired because of his criminal conviction, but when he
18 sent a letter asking the employer to acknowledge that
19 and give him a statement under Article 23A, the
20 employer refused to state that his criminal
21 conviction had anything to do with his not being
22 hired, which makes it extremely difficult for him to
23 respond to the denial and to prove, you know, what
24 was the reason behind the denial. And so the--you
25

1
2 know, being provided with the information required by
3 the Fair Chance Act would help him and others in
4 similar situations. Thank you very much.

5 CHAIRPERSON MEALY: Thank you. I have a
6 question [sic], my brother.

7 BARRY CAMBELL: Good afternoon. My name
8 is Barry Campbell, and I want to thank you for this
9 opportunity to testify here today before the City
10 Council. I'm also representing the Fortune Society
11 where I'm the special assistant to the President and
12 CEO. I have a written testimony here. It's been
13 submitted and 20 copies. I'm not even going to read
14 from it. I'm just going to tell you a bit about my
15 personal experience because it's been a long day. I
16 was released from prison after doing two and a half
17 to five on an armed robbery. I went to Fortune
18 Society as a client. Wound up as an intern. Worked
19 my way all the way up to payroll administrator. I
20 was the payroll administrator there for about six
21 years. Became the payroll manager for 17 years.
22 During that process I had aspirations to break into
23 corporate America, and I went and did an interview
24 with the New York Post. At the time of the
25 interview, the woman who was interviewing me had to

1 do payroll, but she had no payroll administrator, so
2 I politely pushed her out of the chair and I sat down
3 and I did her payroll for her for the New York Post.
4 She told me, she said, "Mr. Cambell, you come back
5 tomorrow, we'll formalize the paperwork. We'll do
6 every--" I didn't even fill out an application. She
7 said, "We'll formalize the paperwork. The job is
8 yours. You're incredible." I came back the next
9 morning and she handed me a check for one day's pay
10 and she said that she couldn't hire me because I had
11 a criminal background. And I mention this story
12 because it was very devastating to me, because I am
13 what you call a system baby, foster home, boys home,
14 jail, prison. I am a system baby. All I know is the
15 streets at that time. And it was devastating to me
16 because I felt like I was being judged on something
17 that I had done seven years ago, eight years go. I
18 never tried to break back into corporate America
19 after that, but I made a mental note to myself, and
20 it helped me to become the person I am today and the
21 job that I have today which is very rewarding
22 financially and spiritually and mentally. I learned
23 that there are systems that are already in place that
24 people are abusing to discriminate against us for.
25

1
2 Enhancements to this bill are not needed. There are
3 loop holes for people to discriminate against us
4 across the board. There are also loop holes in place
5 so that a sex offender doesn't get a job working in a
6 kindergarten class. Those laws are in place already.
7 Why would we give them another mold to manipulate and
8 discriminate against us by putting enhancements on
9 this bill? There are already enough out there, and
10 the point of the matter is is that people need to
11 equate that discriminating against somebody for a job
12 is affecting the human condition of this individual,
13 and that's the piece that people are not connecting.
14 Oh, he's got--there were other jobs. Let him go look
15 someplace else. Well, it doesn't work that way.
16 This person has been heard the word "no" form the
17 moment they were released until they moment they go
18 back to committing crime, and with that being said,
19 think about the human condition that's in play with
20 this law. And thank you for the chance to testify.

21 CHAIRPERSON MEALY: Thank you.

22 WESLEY CANES: Good afternoon.

23 CHAIRPERSON MEALY: Good afternoon.

24 WESLEY CANES: My name is Wesley Canes
25 [sp?], and I am the Re-entry Advocate for Brooklyn

1
2 Defender Services, a public defense office that
3 represents more than 40,000 people arrested in
4 Brooklyn each year. All of our clients have had
5 interactions with the criminal justice system and
6 must deal with the collateral consequences of those
7 interactions. The American Bar Association has
8 identified over 38,000 penalties that can impact
9 people's long term ability after crime. These
10 consequences include barriers to housing, education,
11 employment, voting rights, citizenship and public
12 benefits, civil penalties that are rarely considered
13 during the criminal court process. Lifelong
14 banishment from employment is not part of any court
15 sentence, yet remains a reality for many of our
16 clients due to their persistent discrimination in the
17 workplace. Due to the racial disproportionalities in
18 the criminal justice system, employment
19 discrimination based on criminal convictions has an
20 equally disproportionate impact on communities of
21 color. For this reason, the US Equal Employment
22 Opportunity Commission and the Department of Labor's
23 Office of Federal Contract Compliance Programs
24 endorses ban the box as a best policy practice. The
25 Fair Chance Act also known as ban the box would

1
2 prevent employers from unjustly discriminating
3 against people with criminal justice histories and
4 would provide all New Yorkers with an equal
5 opportunity to compete for jobs. It is an extension
6 of current policies already governing city agencies,
7 and would extend these anti-discrimination measures
8 to private employers. With the passage of this
9 legislation, New York City would join the more than
10 10 states and over 60 cities and counties in the US
11 that have enacted their own Fair Chance policies.
12 Four states, Hawaii, Massachusetts, Minnesota and
13 Rhode Island extend the policy to all public and
14 private employers, and an increasing number of cities
15 are doing the same thing, including Buffalo in New
16 York State, San Francisco, which has been spoken
17 about earlier and Seattle. The Fair Chance Act is
18 not a handout. It merely bars employers from asking
19 about an applicant's criminal history until they have
20 decided an individual has the qualifications for the
21 job. After a conditional offer of employment is
22 offered, then the employer can do a background check
23 and ask the applicant for information about
24 convictions that may be relevant to the job.
25 Employers may still deny employment to workers with

1 conviction histories that are directly related to the
2 job or pose an unreasonable risk. For this reason,
3 the Brooklyn Defender Association has strongly
4 supports this bill and what it's intended to do,
5 which is to even the playing field for ex-offenders
6 to find work. Thank you.

8 CHAIRPERSON MEALY: Thank you.

9 KIMBERLY HOWARD: Good afternoon. Hi.

10 CHAIRPERSON MEALY: Good afternoon.

11 KIMBERLY HOWARD: My name is Kimberly
12 Howard. I sit on two boards. I work for a reputable
13 nonprofit here in the city. I work with runaway
14 homeless youth and commercially sexually exploited
15 children. I'm not saying all of this to pat myself
16 on the back, but I came a long way. I have a felony
17 conviction and normally don't talk about it that much
18 because of just the stigma that comes along with
19 that. I wish I could say the organization that I
20 work for, but unfortunately I can't, because we hold
21 government contracts and we work with federal, local
22 and state law enforcement, just numerous things. I
23 recently went for another job, just because when
24 you're working in nonprofits and even just still in
25 today, you really need two source of incomes to

1 really sustain as a single individual. And one thing
2 what I normally think about when I go for jobs is are
3 they going to discriminate me against because I'm
4 transgender, right? That's something that's real.
5 But I can put on tons of makeup and disguise myself.
6 I can talk or act or look a certain way, right? But
7 I can't hide the fact that I have a criminal record.
8 And all of the training and knowledge that I know
9 about how to interview, and I interview very well, it
10 still bothers me about talking about that piece. And
11 so I find myself going to interviews disclosing from
12 the jump I have a criminal record, and I weigh myself
13 out. When I'm writing down, "explain your record",
14 right? I've accomplished so many things in my life,
15 but that is not only traumatic for me because it's
16 been 2008 since I've been even incarcerated. And
17 that has been really hard for me. So with this Fair
18 Chance Act it would help me to be a law abiding tax
19 paying citizen and continue to do the work that I do.
20 I myself is calling for higher education for an
21 advanced degree, and I know that hopefully that would
22 put me at a greater chance of continuing the work
23 that I do. Again, like the pastor said earlier, none
24 of the jobs that I've ever had was just because I
25

1 applied. It was--I built networks for that. And I'm
2 glad to see that someone was here earlier from DCAS,
3 because I truly would love to bring my experience to
4 the city of New York. So, again, I definitely
5 appreciate this hearing and this bill. So, thank you
6 so much.

8 CHAIRPERSON MEALY: Thank you. All these
9 testimonies, they have so much. But quickly, young
10 man said--do you feel you kind of against that we're
11 giving the employers just another loophole to go
12 through? I kind of--I thought about that. That's
13 why I was thinking so hard about this bill just as
14 well, but I think if the penalties, at least we have
15 someone checking it, or one of these organizations
16 going to start thinking about creating a database to
17 make sure that we could start seeing when the emp--
18 when constituents come in, not even constituents--
19 when people come for a job and they denied, we have
20 to start thinking about what letters that they write
21 to these individuals, and then we could maybe start
22 analyzing was it because afterwards they told them
23 that their record, or was it just now you didn't
24 qualify or you just don't fit in our mold. We have

1
2 to do something, but I feel this is a good step. You
3 disagree?

4 BARRY CAMBELL: No, I think it is a good
5 step. What I think is a bad step within this good
6 step is enhancements to it, and I'll give you an
7 example. Most job applications are done online
8 today. Most companies have built in a thing that
9 when you click on that box your application drops
10 out. There is now way for us to prove this. There
11 is no way for us to say you're not really looking at--
12 -because none of the people that we put down to fill
13 out these applications ever get called in, but we
14 can't find a way to prove this to them. So that's
15 just one way that they're using what they--

16 CHAIRPERSON MEALY: [interposing] So now,
17 do you think if--now, online, if that box is gone
18 now, how can they decipher if you have a record or if
19 you do not have a record. They would have to go buy--
20 -

21 BARRY CAMBELL: [interposing] They would
22 have to--

23 [cross-talk]

24 CHAIRPERSON MEALY: So, this a good step.
25

1
2 BARRY CAMBELL: It is a great one, but
3 once you put enhancements in it like a person who has
4 been--let's say if you've been convicted of credit
5 card theft, identify theft and you go to apply for a
6 job to work in a bank, that's crazy. I wouldn't even
7 do that if I know I've got identity theft in my
8 background. I wouldn't even apply for Bank of
9 America. That's the first thing. The second thing
10 is that most of the times, these applications and
11 these corporations already have things in place to
12 drop you out the bottom once you click on that box,
13 and that's what I'm talking about. If you take the
14 box away and then you give them another enhancement
15 to use in place of that box, then we're defeating the
16 purpose. If you say--

17 CHAIRPERSON MEALY: [interposing] Okay,
18 this bill is not finished yet.

19 BARRY CAMBELL: No, I understand that.
20 I'm just saying--

21 CHAIRPERSON MEALY: [interposing] So, I'm
22 letting you know--

23 BARRY CAMBELL: I'm against the
24 enhancement. I'm not saying the bill is wrong. I
25 love the bill. I love it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRPERSON MEALY: But just make sure we really make sure that we don't give them an extra out.

BARRY CAMBELL: Yes, because right now it's very hard for us to hold them accountable for what they're doing. It's a very hard task.

CHAIRPERSON MEALY: And that's what I want to do with me signing onto the bill right now, we have to make sure that checks and balances come and people are held accountable. We still didn't think about if someone do get caught, what is the penalty? We still trying to work on that. With civil rights in general, a lot of employees are discriminating and to me the fees are not high enough. So, please stay in tune.

BARRY CAMBELL: I with you on that.

CHAIRPERSON MEALY: Okay, and I--that was one of the questions I was going to ask every last one of you. Do you think the law would have employers really tell the truth when they send them back that letter?

UNIDENTIFIED: Well, go ahead.

CHAIRPERSON MEALY: And mum's the word.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

KIMBERLY HOWARD: Actually, what I'm thinking about is there--

CHAIRPERSON MEALY: [interposing] Quickly.

KIMBERLY HOWARD: I'm sorry?

CHAIRPERSON MEALY: Quickly.

KIMBERLY HOWARD: Oh, what I'm thinking about is there are sections on when I'm thinking about the online portal drop box, there's a thing that's called good moral conduct, and what does that mean when a person says, when the question's asked, "Have you had good moral standing conduct?" What does that mean? And that's--I think that can be used for a discriminatory reasons to not hire someone, because if you had a conviction, in their mind, you haven't had a good moral conduct.

CHAIRPERSON MEALY: Okay, that's one of the loopholes.

COUNCIL MEMBER ROSE: Is that soemthign on an application?

KIMBERLY HOWARD: That is something, a questionnaire that a lot of jobs ask online.

CHAIRPERSON MEALY: Offline I'll talk to Peter Keefe. We'll see what happens. Paul Keefe,

1 we'll talk offline in regards to that. I didn't
2 hear--I never heard about that. But, Ms. Alba, could
3 you answer that? Do you think the employers would
4 come back with a letter stating that it'll be totally
5 separate and different from what the interview was,
6 but then when they're trying to deny them because
7 they find out that they had a record, that letter
8 stating why I'm not employing now? Do you think we
9 giving them a little--will they really tell the truth
10 that it's because of your record, or they'll find
11 another way out?

13 SARAH ALBA: I mean, it's hard to say
14 whether employers are ever going to tell the truth,
15 but I do think what this act would do is, if they've
16 given you a conditional offer and then they run the
17 background check and then they take away the offer,
18 it gives you at least some argument that the reason
19 they're taking away the offer is because of the
20 background check, right? So it's going to be harder
21 for them to lie to people and just say, "Oh, it was
22 based on, you know, a misfit."

23 CHAIRPERSON MEALY: So I rest my case.
24 It's a great start that we got to hold them
25 accountable. Okay, then, thank you panel, and we

1 will talk about that 10A soon. We will discuss it in
2 the law. One last panel, Alexander Gomez. Please
3 state your name. Pull it to you closely. This is
4 our last panel.
5

6 ALEXANDER GOMEZ: My name's Alexander
7 Gomez. I'm also a medical student at Mount Sinai.

8 CHAIRPERSON MEALY: Could you pull the
9 mic closer?

10 ALEXANDER GOMEZ: I wanted to talk a
11 little bit about--I've been spending my last few
12 months almost exclusively in hospitals every day, so
13 I just wanted to talk a little bit about why I think
14 specifically there shouldn't be a whole lot of extra
15 exemptions for hospitals and healthcare institutions.
16 The first reason is they are huge employers. For
17 example, Mount Sinai, where--I'm not representing
18 them, but I know we've recently acquired some other
19 hospital systems. It's one of the largest employers
20 in New York now. Not only are hospitals large
21 employers, but they tend to be located in the same
22 communities that have borne the brunt of this legacy
23 of racism in our justice system. So I think about
24 where New York Presbyterian is. Think about where
25 Mount Sinai is. Where's Montefiore? These are all

1 in communities that suffer from racism in our justice
2 system. And not only that, I think it's really
3 important that should any of these exemptions be
4 included in the bill, that they be based specifically
5 on job description and not the employer. Hospitals
6 are huge places with all kinds of things going on. I
7 signed up to be a doctor, but you know, in the
8 hospital I've got--there's nurses, there's cooks,
9 there's mechanics, there's social workers, there's
10 administrative assistants. We've heard from people
11 who are trying to become medical assistants. We just
12 heard from people talking about health aides. All
13 kinds of different professions that someone with a
14 criminal record might apply for and might be a good
15 fit for as we just heard, even things that we think
16 might be sensitive. Of course, there's issue to
17 patient safety, and as everyone has already said,
18 there's nothing stopping a hospital or any other
19 employer from running a background check and denying
20 a job if it does seem like there's a true conflict
21 with the past conviction. But I think there's another
22 aspect of patient safety that other people have also
23 alluded to and that hospitals and I think the city
24 also have a great responsibility to consider, and
25

1 that is the safety of the applicant, of the job
2 applicant, because those people are also our
3 patients, and for them, you know, there's--you learn
4 on rotations there's some things you can do for
5 people and there's some things you can't. To deny
6 someone who is seeking an income and health insurance
7 and a way to take care of their family and their
8 community, to deny them that, that's unsafe to them
9 and that's unsafe to their community and their family
10 and their children. And so that's all I have to say.
11 Thank you for this opportunity.

12 CHAIRPERSON MEALY: Thank you, Mr. Gomez.
13 Thank you so much. This hearing, we are wrapping up,
14 and I just want to say Intro 318, sponsored by my
15 colleague Council Member Williams--my time is not up.
16 My colleague Council Member Williams seeks to address
17 the issues of criminal background checks and the
18 hiring process of ex-offenders. This bill would also
19 limit the situations where an employer can ask about
20 or consider a job applicant credit background.
21 Today, this committee, we heard testimony regarding
22 this bill from the Administration, the community
23 organization, and other affected individuals. I
24 thank all for providing testimony. That is important
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CIVIL RIGHTS

to understand the impact of this bill, and one thing
I heard today that I'm going to stay with, do not
judge me by my record. And this meeting is now
adjourned. Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CIVIL RIGHTS

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date December 8, 2014