

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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October 16, 2017
Start: 1:36 p.m.
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HELD AT: Council Chambers - City Hall

B E F O R E: Vanessa L. Gibson
Chairperson

COUNCIL MEMBERS:

Vincent J. Gentile
James Vacca
Julissa Ferreras-Copeland
Jumaane D. Williams
Robert E. Cornegy, Jr.
Chaim M. Deutsch
Rafael Espinal, Jr.
Rory I. Lancman
Ritchie J. Torres
Steven Matteo

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

Robert Boyce
NYPD Chief of Detectives

Oleg Chernyavsky
Director of Legislative Affairs at NYPD

Vincent Coogan
Chief of Transit Bureau at NYPD

Nicole Torres
Deputy Chief of Public Affairs at NYPD

Jonathan David
Director of License Division at NYPD

Alex Crohn
General Counsel at Mayor's Office of Criminal
Justice

Dan Quart
Assembly Member 73rd District

Martin LaFalce
Legal Aid Society

Hara Robrish
Legal Aid Society

Kate Wagner-Goldstein
Legal Action Center

Judy Whiting
Community Service Society

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

Estee Konor
Community Service Society

Wesley Caines
Bronx Defenders

Kate Rubin
Youth Represent

Christine Bella
Legal Aid Society

Jared Chausow
Brooklyn Defender Services

Marlene Bodden
Legal Aid Society

Marielle Getz [sp?]
The Brady Center

Kelly Grace Price
Jails Action Coalition

CHAIRPERSON GIBSON: Good afternoon, ladies and gentleman. Welcome to the City Council Chambers. I am Council Member Vanessa Gibson of the 16th District of the Bronx, and I'm proud to Chair the Committee on Public Safety. First, let me thank each and every one of you for being here this afternoon. There are important legislation and resolutions on today's agenda that relate to accountability in the criminal justice system and strengthening gun safety. Before we begin today's hearing I want to acknowledge that we will be voting on Intro. 1569, which I'm proud to serve as prime sponsor, which relates to the prohibiting of disorderly behavior. This legislation will create an administrative code offense that is an alternative to the state's current disorderly conduct statute, and would carry a maximum penalty of no more than five days in jail. This bill would give more options to prosecutors in resolving many cases that could potentially avoid negative consequences for many New Yorkers. creating this City offense alternative will not only help our growing immigrant community, but all New Yorkers that is truly in line with our City Council's goal of creating proportional penalties for

1 low-level offenses. I'd like to acknowledge the
2 members of the committee who are here, Council Member
3 Jumaane Williams, Council Member Rafael Espinal,
4 Council Member Rory Lancman, Minority Leader Steve
5 Matteo, Council Member Vincent Gentile, Council
6 Member Robert Cornegy, and Council Member Ritchie
7 Torres. And before we begin, do any of my colleagues
8 have questions on the legislation that we need to
9 take a vote on, Intro. 1569? Please do so now.
10 Also, like to acknowledge the presence of Council
11 Member Corey Johnson and with that, let me turn to
12 our Committee Clerk to begin calling the roll. Thank
13 you, colleagues.
14

15 COMMITTEE CLERK: Committee Clerk Matthew
16 DeStefano [sp?], Committee on Public Safety. Roll
17 call vote on Intro. Number 1569A. Chair Gibson?

18 CHAIRPERSON GIBSON: I vote aye.

19 COMMITTEE CLERK: Gentile?

20 COUNCIL MEMBER GENTILE: I vote aye.

21 COMMITTEE CLERK: Williams?

22 COUNCIL MEMBER WILLIAMS: Aye.

23 COMMITTEE CLERK: Cornegy?

24 COUNCIL MEMBER CORNEGY: Aye.

25 COMMITTEE CLERK: Espinal?

COMMITTEE ON PUBLIC SAFETY

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COUNCIL MEMBER ESPINAL: Aye.

COMMITTEE CLERK: Lancman?

COUNCIL MEMBER LANCMAN: Aye.

COMMITTEE CLERK: Torres?

COUNCIL MEMBER TORRES: Aye.

COMMITTEE CLERK: Matteo?

COUNCIL MEMBER MATTEO: No.

COMMITTEE CLERK: By a vote of 7 in the affirmative, 1 in the negative and no abstentions, the item has been adopted.

CHAIRPERSON GIBSON: We also have been joined by Council Member Jimmy Vacca, also a member of the committee.

COMMITTEE CLERK: Council Member Vacca?

COUNCIL MEMBER VACCA: [off mic]

CHAIRPERSON GIBSON: Thank you, colleagues for your support of Intro. 1569. We're going to keep the voting roll open as we begin our hearing today on public safety. Today's agenda includes three reporting bills today that generally relate to comprehensive reporting on criminal enforcement in the City of New York: jumping the turnstile arrests and NYPD crime clearance rates. In addition there are bills relating to requiring the

1 Mayor's Office of Criminal Justice to address the
2 warrant system and create a system to address errors
3 on people's criminal records. There is also a
4 resolution in support of a state bill in relation to
5 gravity knives. Finally, we are hearing two
6 resolutions and one bill relating to gun safety.
7 Recently, there have been several reports indicating
8 the need for the NYPD to allocate more detective and
9 investigators in boroughs that experience more crime.
10 This determination could be assisted by the analysis
11 of precinct crime clearance rates. Introduction
12 Number 1611, sponsored by Council Member Torres,
13 relates to requiring the Police Department to submit
14 reports on clearance rates. Introduction Number
15 1636, sponsored by Council Member Johnson, relates to
16 requiring the Mayor's Office of Criminal Justice to
17 address erroneous criminal records. According to the
18 Legal Action Center, there are nearly 2.1 million
19 criminal records that include bureaucratic errors.
20 These errors could have serious collateral effects on
21 an individual in specific areas of housing,
22 employment and other social service benefits. This
23 bill will begin to address many of these issues.
24 Introduction 1664 and 1712 are both sponsored by
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1 Council Member Lancman. Intro 1664 relates to
2 reporting on fare evasion arrests or jumping the
3 turnstile offenses. The NYPD can enforce this by
4 issuing a civil summons returnable to the Transit
5 Adjudication Bureau or under the state's penal law.
6 This bill would require the NYPD to report how many
7 TAB summons are issued and how many people are
8 arrested under the penal law. The information would
9 disaggregated by police precinct, Subway Transit
10 Bureau, as well as demographics of the offender. We
11 are also hearing two pre-considered bills, Pre-
12 considered bill number T2017-6381 will address
13 warrants in the City. Earlier this year, our Speaker,
14 Melissa Mark-Viverito, called for the clearance of
15 summons warrants older than 10 years. In August, the
16 District Attorneys of Manhattan, Brooklyn, the Bronx,
17 and Queens dismissed over 600,000 warrants across the
18 City. This pre-considered bill will further address
19 issues with the current warrant system and require
20 MOCJ to make efforts to address outstanding criminal
21 warrants and to issue an annual report related to
22 these activities. We're also hearing two pre-
23 considered resolutions and a pre-considered bill
24 related to gun safety that I'm proud to co-sponsor
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1 along with our Speaker. The most recent massacre in
2 Las Vegas has sadly become an all too familiar
3 narrative. Yet, our federal law makers refuse to
4 take sensible action. We in the City of New York
5 have one of the strongest gun laws in this country,
6 and we must do everything possible to continue to
7 pass resolutions and legislation. In addition, we
8 must stand firm in opposing harmful federal
9 legislation which threatens and undermines our
10 priorities which will also make New Yorkers less safe
11 and undermine all the efforts that we fight for every
12 day to protect our city. The next two pre-considered
13 resolutions and bills are sponsored by the Speaker
14 and myself. The first one is T2017-6704 which
15 opposes the federal legislation known as the "Hearing
16 Protection Act of 2017." This deceptively titled
17 bill would eliminate the transfer tax on silencers
18 and eliminate the months' long federal registration
19 process. Many of the victims of the Las Vegas
20 shooting were saved because they could hear the sound
21 of gunfire. This loosening of restrictions on gun
22 silencers would make all of us less safe, and I
23 strongly oppose this legislation. The other pre-
24 considered resolution is T2017-6706 which calls upon
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1 Congress and the President to oppose the federal
2 "Concealed to Carry Reciprocity Act of 2017." This
3 committee heard earlier this year and passed a
4 resolution on a similar bill last may under the
5 former federal administration. We continue to oppose
6 this dangerous piece of legislation. This bill would
7 allow a resident from one state who has a license to
8 carry a concealed handgun to lawfully care their
9 firearm to a different state regardless of the
10 licensing eligibility standards of the other state.
11 New York City has one of the strictest licensing
12 laws. Our Licensing Division at the NYPD conducts a
13 rigorous screening of each applicant prior to
14 granting a license. The City does not recognize out-
15 of-city permits, including those issued by the State
16 of New York. This federal bill would undermine our
17 ability to keep our fellow New Yorkers safe. It will
18 compromise our officers' ability to safety police our
19 streets. Pre-considered Intro Number T2017-6705
20 relates to requiring the Police Department to
21 disclose gun violence information to applicants for
22 firearm licenses and permits. According to surveys,
23 63 percent of Americans believe that having a gun in
24 their house makes them safer. However, several
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1 studies indicate quite the opposite. Homes with
2 firearms have an increased risk of suicide,
3 accidental shooting, and death during domestic
4 incidents. This bill will require the NYPD to
5 provide a warning to applicants for firearm licenses
6 and permits relating to the increased risk of owning
7 a firearm. Just like the warnings on the side of
8 cigarette packs changed the perceptions that many
9 have of smoking, these gun warnings are the first
10 step to changing the public's conversation. We would
11 be one of the first major jurisdictions to enact this
12 type of legislation. We're also hearing a resolution
13 which I am proud to sponsor, Resolution 1660 relating
14 to gravity knives. While I am aware that there's
15 current legislation before the Governor's Office that
16 this resolution supports, we also know that various
17 stakeholders are also a part of current conversations
18 with all of the stakeholders including the Governor's
19 Office and the NYPD. I'm interested in learning more
20 about the issues of gravity knives in general that
21 we're having in the City and would also like to
22 publicly continue the conversation that we're having
23 during today's hearing. I'd like to thank all of the
24 sponsors of today's legislation and all of the staff
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1 that worked very hard on thee important bills. We
2 continue to strive to continue to hear and pass
3 legislation here in this council that really strives
4 to keep all New Yorkers safe. I'd like to recognize
5 the Committee on Public Safety staff, our Senior
6 Legislative Counsel, Deepa Ambikar [sp?], our
7 Legislative Policy Analyst, Casey Addison [sp?], and
8 our Financial Analyst Steve Reister [sp?], and my
9 Chief of Staff, Dana Wax [sp?], and with that I
10 believe we have opening remarks that I will get to
11 from the prime sponsors of legislation that's on
12 today's agenda. First, we will hear from Council
13 Member Rory Lancman, followed by Council Member Corey
14 Johnson. Thank you, colleagues.

16 COUNCIL MEMBER LANCMAN: Thank you, Madam
17 Chair. My bill, Intro. 1664, would require the NYPD
18 to release data quarterly on the number of arrests
19 and civil Transit Adjudication Bureau summonses
20 issued for subway fare evasion, and to break down
21 that data by age, gender, race, subway station where
22 enforcement occurred, and the precinct of the
23 officer. We already know that in the first six
24 months of 2017 the NYPD made more than 30,000 stops
25 for jumping a turnstile and arrested 8,625 people for

1 theft of services, a misdemeanor offense under state
2 penal law. We know that almost 90 percent of those
3 arrested for that misdemeanor were black or Latino.
4 We know that the difference between an arrest for
5 fare evasion, which can result in jail time, a
6 criminal record, and can lead to deportation for even
7 legal permanent residents, let alone visa holders or
8 undocumented immigrants, and a civil violation for
9 violating the MTA's rules, which is like a parking
10 ticket is an astronomical difference. What we don't
11 know is how the NYPD is focusing its enforcement of
12 this low-level nonviolent offense in which
13 neighborhoods against which New Yorkers, which
14 precincts are spending time and resources chasing
15 down fare beaters. We can speculate from the bits of
16 information the NYPD sporadically releases. We can
17 also extrapolate from reports like the one issued by
18 the community Service Society recently, "The crime of
19 being short \$2.75, policing communities of color at
20 the turnstile," which was based on information
21 collected by public defenders in Brooklyn, which
22 found that neither poverty nor criminal complaints
23 fully account for the racial disparity and arrests.
24 In order to know the answer to all these questions,
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2 we must have full and complete data, and that is why
3 I am very pleased to have the Public Safety Committee
4 consider my bill today, and I look forward to the
5 testimony related to it. Thank you, Madam Chair.

6 CHAIRPERSON GIBSON: Thank you very much,
7 Council Member Lancman, and now we'll have Council
8 Member Corey Johnson.

9 COUNCIL MEMBER JOHNSON: Thank you, Madam
10 Chair. Thanks for hearing this bill today. For too
11 long a criminal record has served as a modern day
12 scarlet letter. There are countless ways to impede a
13 person's personal and professional growth. Due to
14 the immense impact these records can have, it is
15 critical that they be held to the highest standards
16 of accuracy and to be maintained beyond reproach. To
17 ensure that that is the case, my bill, Introduction
18 1636 being discussed here today would establish a
19 system to allow both members of the public and
20 nonprofit organizations to rectify erroneous criminal
21 records. These are the people who are both directly
22 impacted by these incorrect records and those
23 advocates fighting on their behalf every day. They
24 deserve a voice and a mechanism to affect direct
25 change to a flawed system. Furthermore, while

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2 correcting the existing inaccuracies within the
3 criminal records is an immediate concern, we must
4 also address the underlying issues that lead to them
5 in the first place. A lack of communication and
6 transparency between the state and local officials
7 tasked with maintaining these records has continued
8 for far too long. With the immense power these
9 records wield over the lives of those with histories
10 they detail comes even greater responsibility to
11 dedicate every available resource to identifying the
12 root causes of errors within them and to propose
13 permanent solutions to address them. Every day that
14 an erroneous criminal record goes uncorrected, it
15 negatively impacts someone's life. We have a
16 responsibility to resolve these issues both swiftly
17 and permanently. I'd like to thank the Public Safety
18 Chair, Vanessa Gibson, my good friend, for hearing
19 this bill today and my fellow Council Members who
20 have lent their support to it and those whose lives
21 have been affected by an erroneous criminal record.
22 Thank you for sharing your story and demanding
23 better, and I look forward to working with the
24 Administration to pass this piece of legislation.
25 Thank you, Madam Chair.

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2 CHAIRPERSON GIBSON: Thank you very much,
3 Council Member Johnson. Thank you to all of my
4 colleagues who are here for today's hearing. I'd
5 like to begin with our first panel assembled before
6 us, our Chief of Detectives, Chief Robert Boyce from
7 the NYPD, Oleg Chernyavsky, our Director of
8 Legislative Affairs with the NYPD. We also have our
9 Assistant Chief, Vincent Coogan, the NYPD Transit
10 Bureau. We have Nicole Torres, Deputy Chief of
11 Public Affairs for the Mayor's Office of Criminal
12 Justice, and General Counsel for the Mayor's Office
13 of Criminal Justice, Alex Crohn. Thank you all for
14 joining this afternoon. Apologies for the late
15 start, and now, before you begin your testimony, we
16 will just have our Counsel administer the oath, and
17 then you may begin. Thank you once again.

18 COMMITTEE COUNSEL: Do you affirm to tell
19 the truth, the whole truth and nothing but the truth
20 in your testimony before this committee and to
21 respond honestly to Council Member questions?

22 CHAIRPERSON GIBSON: Great. Who begins?

23 ALEX CROHN: Good afternoon, Chair Gibson
24 and members of the Committee on Public Safety. My
25 name is Alex Crohn, and I'm the General Counsel of

1 the Mayor's Office of Criminal Justice. Thank you
2 for the opportunity to testify today. I'm joined by
3 my colleague, Nicole Torres, Deputy Chief of Public
4 Affairs at MOCJ. The Mayor's Office of Criminal
5 Justice advises the Mayor on public safety
6 strategies, and together with partners both inside
7 and outside of government develops and implements
8 policies aimed at reducing crime, reducing
9 unnecessary arrests and incarceration, promoting
10 fairness, and building strong and safe neighborhoods.
11 The issues we are here to discuss today should be
12 seen in New York City's larger context. In the last
13 three years in New York City we have seen
14 acceleration of the trends that define the public
15 safety landscape in this city over the last three
16 decades. While jail and prison population around the
17 country increased, New York City's jail population
18 has fallen by half since 1990, and in the last three
19 years, the jail population dropped by an additional
20 18 percent, the largest three-year decline in the
21 last 20 years. This declining use of jails has
22 happened alongside record crime lows. Major crime
23 has fallen by 76 percent in the last 30 years, and by
24 nine percent in the last three years. 2016 was the
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1 safest year in CompStat history with homicides down
2 five percent, shootings down 12 percent, and
3 burglaries down 15 percent from 2015. Arrests for
4 low-level crimes continue to fall. Misdemeanor
5 arrests are down 24 percent in the last five years,
6 violation arrests down 13 percent since 2013, and the
7 number of jail admissions for misdemeanor detainees
8 has dropped by 25 percent since 2014, suggesting we
9 are getting closer to the goal of reserving jail for
10 only those who pose a public safety risk. New York
11 City's experience is continued and unique proof that
12 we can have both more safety and smaller jails. To
13 drive down crime, arrests, and the unnecessary use of
14 jail even further, our office seeks to enhance the
15 spectrum of criminal justice responses available to
16 effectively match criminal justice responses to risk
17 and need. The bill we're discussing today, touch on
18 many of the existing efforts the City is undertaking.
19 In 2014, approximately 310,000 summonses were handled
20 by the Criminal Court system. Only 27 percent of
21 these summonses resulted in a conviction. The
22 pressing problem with the current summons process is
23 the 38 percent warrant rate for failure to appear in
24 court. This high warrant rate is troubling. It
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1 signals that something is not working if people do
2 not even show up for court, and there's consequences,
3 both consequences for the individuals issued warrants
4 and for the criminal justice system's use of
5 resources. It can mean a police encounter for a low-
6 level offense escalating to an arrest, leaving an
7 individuals with a dampened perspective on the
8 fairness and effectiveness of the criminal justice
9 system. To address this problem, in partnership with
10 the state court system, the City is already
11 implementing various changes to the summons process
12 to ensure that when criminal summonses are used
13 individuals easily understand when and where they
14 need to appear in court. We have also completed a
15 successful pilot of a text message reminder system
16 that will decrease the warrant rate for failure to
17 appear in summons court. The Criminal Justice Act
18 passed by the Council last year and signed into law
19 by the Mayor went into effect on June 13th, 2017 as
20 an important improvement to the enforcement and
21 adjudication of low-level offenses. By creating the
22 option for officers to issue a civil ticket in
23 response to low-level offenses such as littering,
24 appropriate low-level cases are bypassing the
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1 criminal justice system altogether, avoiding the
2 possibility of a warrant for failure to appear,
3 avoiding the possibility of a warrant for failure to
4 appear. Finally, this summer, the Bronx, Brooklyn,
5 Manhattan, and Queens District Attorney's offices
6 moved to dismiss over 60,000 open summons warrants.
7 The staggering backlog of open warrants were vacated,
8 allowing thousands of New Yorkers to live their lives
9 without fear of arrest stemming from low-level
10 warrants issued more than a decade ago. The City
11 supports the goal of continuing to work with the
12 courts, prosecutors and Police Department to create a
13 lighter touch on low-level enforcement and reduce any
14 collateral consequences associated with such low-
15 level offenses. While we have concerns about the
16 availability of some of the data that we'd be
17 required to report on under this legislation, we
18 nonetheless look forward to our continued partnership
19 on legislative reforms to advance this goal. Ensuring
20 that individuals do not face unnecessary barriers to
21 leading a stable life is a key element of ensuring
22 that they do not face further involvement with the
23 criminal justice system. As such, the Administration
24 is in favor of directing New Yorkers to resources
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1 that help lift these barriers such as mechanisms to
2 correct rap sheet errors. However, our office has
3 concerns about any legislation that would require us
4 to establish a system to correct errors that is
5 contingent on state participation. As such, we look
6 forward to discussing with the Council how best to
7 accomplish the goals of this legislation. Finally,
8 intro. 1712 requires our office to report on the
9 dispositions of criminal enforcement activity.
10 Currently, the state's records of dispositions do not
11 link back to enforcement data. Therefore, it is
12 impossible to trace which enforcement agency issued
13 the original arrest that lead to a particular
14 disposition. Moreover, disposition data is not under
15 the control of the City. Given these concerns, we
16 cannot support this bill. Thank you for the
17 opportunity to testify here today. I'd be happy to
18 answer any questions you may have.

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20 CHAIRPERSON GIBSON: Thank you very much,
21 Mr. Crohn, and before you begin we're just going to
22 go back to our quick vote. Thank you.

23 COMMITTEE CLERK: Continuation of roll
24 call on Intro. 1569A, Council Member Vacca?

25 COUNCIL MEMBER VACCA: Aye.

COMMITTEE CLERK: The vote for approval now stands at 8 in the affirmative, 1 in the negative, but no abstentions. Thank you.

CHAIRPERSON GIBSON: Okay, thank you very much, and we are closing the vote for Intro 1568 on the agenda. Thank you very much, and I will continue with the hearing. Thank you.

DIRECTOR CHERNYAVSKY: Good afternoon, Chair Gibson and Members of the Council. I am Oleg Chernyavsky, the Director of Legislative Affairs for the New York City Police Department. I'm joined here today by several of my NYPD colleagues, Chief of Detectives Robert Boyce, Assistant Chief Vincent Coogan from the Transit Bureau, and Johnathan David, Director of License Division, as well as my colleagues from the Mayor's Office of Criminal Justice. On behalf of Police Commissioner James P. O'Neill, I wish to thank the City Council for the opportunity to comment on several of the bills under consideration today. Under this Administration and with the help of our partners in government, including the City Council, the NYPD has continued to keep New York City the safest big city in the world. Working closely with the community and making key

1 changes in our operations over the last four years is
2 bearing fruit in terms of both crime fighting and
3 community connection. The City is seeing dramatic
4 declines in crime, the lowest levels of murder since
5 the late 1950s, the lowest level of shootings on
6 record, capped off with the safest September in the
7 modern era. While these reductions are historic,
8 what is more meaningful is the manner in which the
9 Department is doing it. The Department has scaled
10 back on arrests and summonses which have decreased
11 significantly under this Administration. NYPD
12 offices are exercising far more discretion in the use
13 of their enforcement powers and are working closely
14 with communities, policing with them rather than at
15 them. Neighborhood policing is at the Department's
16 agenda. It is allowing the Department to count the
17 residents of our local precincts among our strongest
18 partners, fostering trust and making our city safer
19 on every block. Several of the bills under
20 consideration today are of interest to the
21 Department. I would like to provide my comments on
22 the following bills: Pre-considered Intro. T2017-6705
23 would require that the NYPD License Division provide
24 applicants for firearm licenses and permits with a
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1 warning pertaining to the increased risk of suicide,
2 unintentional death, and death during a domestic
3 dispute in households with firearms. The NYPD
4 License Division is responsible for the application
5 process, screening, and issuing of various types of
6 handgun licenses, as well as rifle and shotgun
7 permits. Although it is unclear from the bill
8 whether the information in the warning is generated
9 from NYPD statistics or another reputable
10 organization, the Department is supportive of the
11 legislation. Intro 1611 would require the NYPD to
12 report quarterly on the clearance rate of index
13 crimes disaggregated by the precinct or other patrol
14 unit. While the Department conceptually supports the
15 legislation, we recommend that the definition of
16 clearance rate be amended to remove references to
17 individuals charged with the commission of an offense
18 and crimes being turned over to the court for
19 prosecution. As you may know, there are many reasons
20 for why a valid arrest made with probable cause may
21 not ultimately be prosecuted. This could include the
22 withdrawal of cooperation by material witness or
23 court's determination that it lacks geographical or
24 legal jurisdiction or a variety of other reasons.
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2 Ultimately, as arrest data is in the Department's
3 control, unlike data relative to charging and
4 prosecution, amending the definition is critical to
5 the Department's ability to comply with this bill.
6 We look forward to working with the Council on this
7 legislation. Intro. 1664 would require the NYPD to
8 report on the number of arrests for theft of services
9 under the penal law and the number of summonses
10 issued that are returnable to the Metropolitan
11 Transit Authority Transit Adjudication Bureau for
12 subway fare evasion. NYPD Transit Bureau personnel
13 deploy in both uniform and plain clothes to enforce
14 theft of services in the subway system. Officers
15 patrol their assigned posts during their tour of
16 duty. These patrols include surveys of subway cars,
17 station platforms, station entrances and exits, as
18 well as station mezzanines where most subway
19 turnstiles are located. Officers are trained to spot
20 a myriad of fare evasion techniques which include
21 jumping over turnstiles, crawling under turnstiles,
22 manipulating turnstiles, entering via the "exit only"
23 gate, etcetera. Those observed committing theft of
24 services are subject to a TAB summons, Transit
25 Adjudication Bureau summons, which is a civil summons

1 or arrest under the penal law. Similar to the recent
2 implemented Criminal Justice Reform Act in
3 determining whether to make civil or criminal
4 enforcement, the Department determines if the
5 individual is a recidivist. A transit recidivist is
6 generally an individual that meets any of the
7 following criteria: has a prior felony or
8 misdemeanor arrest in the transit system in the past
9 two years, any prior sex crime arrest in the transit
10 system, three or more violation level arrests in the
11 transit system in the past five years, three or more
12 TAB summonses in the past two years, or is on
13 probation or parole. Overwhelmingly, a TAB summons
14 is issued to a person who commits theft of services
15 in the subway system rather than making an arrest.
16 Citywide, in 2016, nearly 75 percent or three-
17 quarters of the individuals who committed theft of
18 services in the subway were issued a TAB summons, a
19 civil summons. Year-to-date, the percentage is
20 relatively the same. The Department demonstrates
21 significant discretion when enforcing theft of
22 services, and this practice is consistent with this
23 Administration's concerted efforts to divert people
24 away from the criminal justice system where the
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2 circumstances are appropriate. With respect to Intro
3 1664, the Department is committed to transparency and
4 providing more information to the public about
5 enforcement that takes place in the City's transit
6 system. The Department has some initial concerns
7 about the bill, as some of the information it seeks
8 is not consistent with how the Department maintains
9 its data, specifically in arrest situations. The
10 Department does not track the specific criteria
11 within the transit recidivist definition for why a
12 TAB summons is not issued. Officers in the field are
13 only informed as to whether the individual that they
14 have temporarily detained for fare evasion is either
15 a transit recidivist or not. Notwithstanding this
16 challenge, the Department is capable of reporting the
17 remaining data sought, and looks forward to working
18 with the Council on this legislation. Thank you for
19 the opportunity to discuss these bills today. My
20 colleagues and I are happy to answer any questions
21 you may have.

22 CHAIRPERSON GIBSON: Thank you very much
23 for your testimony today and your presence, a very
24 important agenda before us today. And while I know
25 the Department's general rule is to not specifically

1 comment on resolutions, I really appreciate the
2 Department's strong opposition joining us in terms of
3 the federal legislation that sits before us in the
4 House and the Senate as it relates to the Conceal to
5 Carry, as well as the silencer bill. So, we really
6 appreciate that. And certainly, beyond today's
7 hearing, more to come. I'm hoping that, you know, if
8 there is any advocacy, the Police Commissioner has
9 gone to D.C. before in his efforts to testify before
10 members to really voice the City's opposition. So, I
11 really appreciate that.
12

13 DIRECTOR CHERNYAVSKY: Thank you.

14 CHAIRPERSON GIBSON: I wanted to begin
15 with the Intro. 1617, which is sponsored by Council
16 Member Torres, that relates to the clearance rates
17 for the seven index crimes by precinct or patrol
18 unit. And Chief, I wanted to ask the question,
19 obviously there was an article in the New York Times
20 that talked about the 40 precinct in the South Bronx
21 being one of the highest in terms of the murder rate
22 in the Bronx, but having potentially the fewest
23 detectives per violent crime. So, I wanted to first
24 for the record talk about what has happened since
25 that time in terms of deploying more investigators

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2 for the detective squad in the 40, and also just in
3 general what the Detective Bureau has done? And then
4 I also wanted to ask specifically about how we
5 monitor clearance rates.

6 CHIEF BOYCE: Sure, good afternoon,
7 everybody.

8 CHAIRPERSON GIBSON: Good afternoon.

9 CHIEF BOYCE: So, we at the-- the New
10 York Times article went out, we did a thorough look
11 throughout the Detective Bureau to see what was
12 happening, what squads were short on detectives, and
13 we did a caseload study. All our caseloads is we
14 look at a busy squad like that, we don't want any
15 more than 150 cases per year per investigator.
16 Slower commands without-- much less violence, about
17 170. So, that's the critical data we looked at. We
18 were able to get 75 new white shields [sic] into the
19 Bronx right after that report came out. Quite a few
20 of my-- I believe 11 went to the 40 precinct. So
21 that was the largest transfer of detectives that I've
22 had in my tenure as Chief of Detectives. But across
23 the City we were able to get more and more new
24 investigators in the squads, not as many as the
25 Bronx, but we got quite a few in just to lessen the

1 load, and it's paid a dividend, quite a large
2 dividend as positive closing rates have gone up
3 considerably in the last four years-- well, in the
4 last six years it's gone up considerably. We
5 attribute that to more detectives, more training and
6 a host of other innovations as well as technology to
7 get that done. So, if you look at the positive
8 closing rates right now, we should see the arrests by
9 Detective Bureaus, which is about 88 percent of how
10 we close cases. Now, we'll do 250,000, a quarter
11 million, cases a year. That's what we catch normally
12 in around that-- those numbers right there. Seven
13 major, so much less than that, but are reporting to
14 us, because that's major crimes as defined by the
15 FBI. So, what we're looking at now is 88 percent of
16 those cases, 88 percent are called to the arrest--
17 I'm sorry. Eighty-eight percent of the arrests are
18 done by Detective Bureau. About--

19
20 CHAIRPERSON GIBSON: [interposing] Okay.

21 CHIEF BOYCE: twenty-four percent year-to-
22 date are closed out of those cases, and that's
23 74,000. We've closed up 1,800-- 18,000 with arrests,
24 so about 24 percent. That number has grown over the
25 years. If you go back to 2011 it was 17 percent,

1 then 16, then 18 in 2013, 22 percent in 2014, 22
2 percent in 2015, 23, and now 24. So, we're gradually
3 going up. You know, our closing rate's positive
4 closing rates. So, that's where we are with
5 Detective Bureau right now.

7 CHAIRPERSON GIBSON: Okay. So, the
8 clearance rate is essentially the closure rate in
9 terms of the case being closed as in conviction or
10 meaning the detective work is complete?

11 CHIEF BOYCE: It's closed with an arrest
12 for that--

13 CHAIRPERSON GIBSON: [interposing] Closed
14 with an arrest, okay.

15 CHIEF BOYCE: Closed with an arrest in
16 that crime, and I think Oleg had said before, that we
17 then take the case to the District Attorney's Office.

18 CHAIRPERSON GIBSON: What happens in
19 cases where you have multiple defendants, does that
20 apply in terms of if it's five subjects, all five
21 have to be arrested for that case to close?

22 CHIEF BOYCE: No, one case has to be
23 closed. That's how we clear our case, one case. We
24 often arrest many people on the case, but it counts
25 as one clearance, that's all. No matter how many

1
2 people you arrest, it counts as one clearance on that
3 particular case of robber or so.

4 CHAIRPERSON GIBSON: Okay. So, the 88
5 percent you described, that's the New York City
6 number?

7 CHIEF BOYCE: Eighty-eight percent is
8 six-- out of 18,000 arrests-- 18,506 arrests we've
9 made so far, on the seven majors--

10 CHAIRPERSON GIBSON: [interposing] Right.

11 CHIEF BOYCE: seven major crimes, 16,444
12 were done by the Detective Bureau with a positive
13 closing.

14 CHAIRPERSON GIBSON: Okay.

15 CHIEF BOYCE: Eighteen hundred and
16 nineteen were done by patrol. So, we had a case, and
17 patrol actually made the arrest, which happens, and
18 then 243 were closed by exceptional circumstance, a
19 very small number. Generally speaking, is that when
20 the perpetrator dies in any form or is in jail, we
21 can't arrest him for that. So, that's 243, a very
22 small number.

23 CHAIRPERSON GIBSON: Okay. So, when you
24 ask the question which precinct currently has the
25 highest clearance rate or which precinct has the

1 lowest clearance rate, I want you to speak a little
2 bit about I guess the public perception sometimes is
3 there really isn't a lot of information, obviously,
4 that's available to the public in terms of all of the
5 work detectives do to close a case, meaning make an
6 arrest. A lot of it is contingent upon evidence, you
7 know, footage from security cameras, the cooperation
8 of witnesses. I mean, there's a lot of things that
9 can happen, and I guess many of us in the Council
10 sometimes deal with this from experiences in our own
11 districts where we have a shooting or a homicide and
12 we're dealing with the impacted family, and sometimes
13 there is cooperation, but sometimes there isn't. And
14 so a lot of that is really left to the ability of the
15 detectives and their skillset to make sure that they
16 can close the case. So, when we say that one borough
17 versus another has the highest clearance rate, does
18 that mean that they're doing the best job or does
19 that mean that we have to look at the detective squad
20 overall to see where we need to increase resources,
21 and like you talked about training and making sure
22 the detectives have the most information they can and
23 the most tools at their disposal. So, the precinct
24
25

1 with the highest clearance rate versus the one with
2 the lowest clearance rate in that spectrum?

3 CHIEF BOYCE: Okay. I have them broken
4 down by boroughs, and there's not a lot of swing in
5 between each borough, but I'll go--

6 CHAIRPERSON GIBSON: [interposing] Okay.

7 CHIEF BOYCE: through each one.

8 CHAIRPERSON GIBSON: Okay.

9 CHIEF BOYCE: Starting with Manhattan
10 South, they caught 15,810 cases and made 3,469
11 arrests, which is a 22 percent positive clearance
12 rate. That's Manhattan South. Manhattan North, they
13 caught 8,000-- these are only index crimes, by the
14 way.

15 CHAIRPERSON GIBSON: Right.

16 CHIEF BOYCE: Eight thousand six hundred
17 and seventy-three, they made 1,663 arrests. They had
18 a 19 percent closing rate.

19 CHAIRPERSON GIBSON: Okay.

20 CHIEF BOYCE: We get to the Bronx, 13,734
21 cases of index crimes. They made 3,743 arrests for
22 those crimes. There's a 27 percent closing rate, the
23 highest in the City.

24 CHAIRPERSON GIBSON: Okay.
25

1
2 CHIEF BOYCE: We have Brooklyn South with
3 9,787; 2,235 arrests, which is 23 percent. Brooklyn
4 North, the second highest closing rate in the City,
5 10,280; 2,449 for 24 percent closing rate.

6 CHAIRPERSON GIBSON: Okay.

7 CHIEF BOYCE: Going into Queens, 6,000--

8 CHAIRPERSON GIBSON: [interposing] That
9 Queens North or Queens South?

10 CHIEF BOYCE: Queens North, I'm sorry.

11 CHAIRPERSON GIBSON: Okay.

12 CHIEF BOYCE: Queens South, 6,245 cases,
13 1,776 positive clearance, 28 percent. Queens North,
14 7,912; 1,954 positive clearance rate, 25 percent.
15 And we finish with Staten Island 74,435-- I'm sorry.
16 I gave you the total-- 1,994; 704 cases for a 24
17 percent. Total citywide is 24 percent as well.

18 CHAIRPERSON GIBSON: Okay.

19 CHIEF BOYCE: So, that's where we come up
20 with these numbers, and this is for major crimes.

21 CHAIRPERSON GIBSON: Okay. So, the
22 legislation before the committee that talks about
23 putting all of this into an actual report, the
24 position of the Administration and your ability to
25

1
2 comply with reporting on the clearance rates for the
3 seven major index crimes, is that something?

4 DIRECTOR CHERNYAVSKY: Well, right. So,
5 conceptually we're supportive. We think we can
6 report with the exception of the definition of
7 clearance rate would need to be amended because it
8 takes-- it factors in data not within the
9 Department's control. When we limit it to arrest
10 data, that is data within the Department's control,
11 and we can report based on whether or not an arrest
12 has been made in conjunction with a complaint for an
13 index crime. That, and then also the disaggregation
14 by, I believe it has it as precinct PSA Transit
15 District, Street Crime Unit, and Narcotics Division.
16 For example, the Street Crime Unit is not a unit any
17 longer within the Department. So, we'll have to
18 figure out, working with the Chief of Detectives and
19 working with the Council, we'll have to figure out
20 the parameters of how to break down the statistics
21 but just as the Chief just mentioned, certainly
22 Patrol Bureau is something that could be done.

23 CHAIRPERSON GIBSON: Okay. And Chief, the
24 numbers that you're giving me on the clearance rates,
25 that does include PSAs as well?

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CHIEF BOYCE: Yes.

CHAIRPERSON GIBSON: Okay, I wanted to make sure--

CHIEF BOYCE: [interposing] [cross-talk]

CHAIRPERSON GIBSON: I knew it did, but I just want to double check.

CHIEF BOYCE: Detective Bureaus, Detective Squads catch those when they were with the jurisdictional-- whatever jurisdiction they're in, so yes, it does.

CHAIRPERSON GIBSON: Right. So, for instance, if it's a PSA7 in the 42 it would be 42 Detective Squad that would handle that case.

CHIEF BOYCE: Yes, it is, yes.

CHAIRPERSON GIBSON: Okay, just making sure. Okay, I want to move on to Intro. 1664. Council Member Lancman is the prime sponsor, and we'll probably talk more about that, but I just wanted to ask specifically about officers being stationed in every train station to issue a TAB summons or theft of services arrest, how is it determined where transit officers are stationed in terms of foot patrol, on the platform, in the

1
2 entrance, exits; how does that work within the
3 Transit Bureau?

4 CHIEF COOGAN: I mean, we assign officers
5 on a different parts, but crime, you know, where our
6 crime is occurring, that is one of the, you know,
7 places-- one of the reasons why we assign officers to
8 certain stations. There could be certain conditions
9 at stations such as swipers [sic], complaints on
10 public-- again, they could be swipers that the public
11 is complaining about-- the MTA ridership. You know,
12 where we have a large amount of people, you know,
13 we'll usually assign like to major hub stations,
14 officers to those stations, and then we also take,
15 you know, the possibility of terrorism into account,
16 the major hubs such as Grand Central, Times Square,
17 Harold's Square, on assigning officers.

18 CHAIRPERSON GIBSON: Okay. The
19 legislation proposed by the Council Member includes
20 disaggregation by the particular station, the
21 location, the precinct of the arresting officer and
22 obviously age, ethnic, demographic, background,
23 gender, and I wanted to know your thoughts on that,
24 and obviously the reason why is because there is a
25 lot of conversation about New Yorkers being arrested

1 for fare evasion, and obviously some of the targeted
2 enforcement that seems to happen in communities of
3 color versus other communities, and I wanted to get
4 your thoughts and understanding of this particular
5 legislation itself, and what officers are doing
6 citywide, right? I represent Transit District 11
7 near Yankee Stadium that covers the entire Four Line,
8 right? And so there are times when things happen and
9 we have to call them, but obviously we've received
10 some inquiries from some New Yorkers that feel like
11 officers are stationed at certain train stations
12 because there's a high concentration of young men and
13 women of color where the enforcement is greater than
14 it is in other places. So I wanted you to talk
15 specifically about that, because the legislation
16 itself is asking for demographic data where we can
17 understand how this happening in terms of arrest, and
18 also for us looking at trends and patterns. So, I
19 wanted to know if you could speak to that.

21 DIRECTOR CHERNYAVSKY: Sure, I mean, I--
22 it should go without saying, but I should start off
23 by saying any claims that we deploy resources based
24 on the percentage of individuals of color in that
25 particular area is just purely false. As the Chief

1 just mentioned, there's a number of factors that goes
2 into determining how we deploy, for example,
3 potential for terroristic threat in stations like
4 Times Square, Harold's Square, Grand Central, also
5 complaints from the community, the volume of
6 ridership in a particular transit station as well as
7 criminal activity that relates back to that station.
8 With respect to the legislation, I think for the most
9 part we would be able to comply with the data points
10 that are sought in the legislation. So, for example,
11 the demographic, the age or the gender, the race, the
12 station where the enforcement is happening, these
13 data points we can certainly comply with. The
14 precinct of an officer, I think what is meant is
15 Transit District because that's really who engages in
16 this level of enforcement underground. As you know,
17 the City transit system is divided up into Transit
18 District which are essentially precincts underground.
19 So, that disaggregation point could be done based on
20 Transit District. I think where the bill calls for a
21 particular type of disaggregation which is
22 disaggregating which criteria within the definition
23 of transit recidivist and disaggregating based on the
24 criteria within that definition, that's something
25

1 that we're not capable of doing as we stand. So,
2 I'll explain how the process works. If an officer
3 stops an individual for theft of service, the
4 individual is run for a warrant check and whether or
5 not the individual is a transit recidivist, and as I
6 mentioned in the testimony there are a number of
7 factors that contribute to the definition of transit
8 recidivist among which are committing two felonies or
9 misdemeanors in the transit system within two years,
10 committing a sex crime, unlawful surveillance, which
11 is looking up people's dresses when they're walking
12 up the steps, and positioning yourself under the
13 steps to take pictures, that would be unlawful
14 surveillance, public lewdness, receiving multiple
15 civil summonses, I believe it's three over the course
16 of five years-- three over the course of two years.
17 And there are other factors as well. What happens is
18 when an officer calls in the name of an individual
19 they stop, all they receive back is whether or not
20 the person is a transit recidivist. It's either a
21 yes or a no, which factors contributed to that
22 determination or sometimes an individual fits
23 multiple criteria. That is not disaggregated. So, I
24 think the possible solution to that would be for us
25

1
2 to simply make our transit recidivist policy public,
3 and we can pose that on our web page so the public is
4 aware of the factors that we consider in making an
5 individual ineligible for a civil summons, but other
6 than that the various data points that the bill is
7 looking for, we can comply with.

8 CHAIRPERSON GIBSON: Okay, what's the
9 time frame on that measure going public?

10 DIRECTOR CHERNYAVSKY: I believe just to--
11 - I mean, we have to get the systems-- they're
12 generally in place where we just want to streamline.
13 I would think sometime to the tune of 90 days we can.

14 CHAIRPERSON GIBSON: Okay. How many
15 transit districts do we have in New York City?

16 CHIEF COOGAN: Twelve.

17 CHAIRPERSON GIBSON: Twelve? Okay. Do
18 you have reports that indicate the transit district
19 that has the highest and lowest number of theft-of-
20 service arrests? So, do you have like a basic
21 breakdown that tells you each transit bureau, the
22 number of arrests that you can look at potential
23 trends to see where most of the theft-of-service
24 arrests are happening throughout the City?

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COMMITTEE ON PUBLIC SAFETY

CHIEF COOGAN: Yes, we can give you by station or post within the station, you know, the amount of arrests or TAB summonses that are given out.

CHAIRPERSON GIBSON: Okay. So, if I asked the question today based on your understanding, which transit bureau today has the highest number of arrests for theft of services?

CHIEF COOGAN: 42nd Street and Eight Avenue.

CHAIRPERSON GIBSON: That's Transit District-- which one?

CHIEF COOGAN: That's Transit District--

CHAIRPERSON GIBSON: [interposing] That's TD1?

CHIEF COOGAN: One, Transit District One.

CHAIRPERSON GIBSON: And what about the lowest?

CHIEF COOGAN: I don't have-- I have the top 10 with me.

CHAIRPERSON GIBSON: Oh, you have the top 10, okay. Can you give us the list?

CHIEF COOGAN: Okay, 42nd Street and Eighth Avenue is number one; 14th Street Union Square, two;

1 J Street Metro Tech; 34th Street in Harold Square;
2 Stillwell Avenue on Coney Island; Utica Avenue on
3 Crown Heights; 116th Street and Lexington; 42nd and
4 Times Square; Third Avenue 149th Street; and 125th and
5 Saint Nicholas.
6

7 CHAIRPERSON GIBSON: Okay. Thank you very
8 much. Thank you. Good to have this. Okay, I wanted
9 to ask a question about the pre-considered resolution
10 that-- pre-considered intro that talks about
11 providing applicants for firearm licenses and permits
12 with a warning system. So, I wanted to understand
13 the licensing division, right? Which goes through an
14 extremely long and lengthy process to even issue
15 permits for firearms in New York City. So, today,
16 what information does the NYPD provide to any person
17 when issued a firearm license today? Can I get an
18 understanding?

19 UNIDENTIFIED: [off mic]

20 CHAIRPERSON GIBSON: Oh, you have to come
21 to the front, and I need your name for the record.

22 JONATHAN DAVID: My name is Jonathan
23 David. I'm the Director of the NYPD License Division.

24 CHAIRPERSON GIBSON: Okay, could you
25 repeat your name again?

1 JONATHAN DAVID: Jonathan David.

2 CHAIRPERSON GIBSON: Okay, sorry. I'm
3 having trouble hearing today. There's a loud bill
4 signing going on downstairs.
5

6 JONATHAN DAVID: So, when a person
7 applies for a gun license, you know, they have to
8 fill out an application, and they're interviewed by
9 an investigator. The application is reviewed. They
10 do an extensive background check. We also have a
11 pamphlet that we hand out to all applicants about the
12 licensing division about the laws and rules related
13 to gun licensing, and we also advise them of the
14 different sections of law that they are supposed to
15 familiarize themselves with before they obtain a gun
16 license, and they have to sign a statement saying
17 that they have familiarized themselves with various
18 sections of law including-- [off mic]

19 CHAIRPERSON GIBSON: So, they have to
20 sign a form that acknowledges that they've understood
21 the pamphlets and all the information that's been
22 given as well as the current local, state and federal
23 laws that they have to comply with.

24 JONATHAN DAVID: Not the pamphlet, but
25 the local, state and federal law, yes.

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COMMITTEE ON PUBLIC SAFETY

CHAIRPERSON GIBSON: Okay, okay. Is there any way that we at the Council can see one of the pamphlets and what it looks like?

JONATHAN DAVID: Yes.

CHAIRPERSON GIBSON: Okay.

JONATHAN DAVID: I may have them with me, but if not I can get one to you very quickly.

CHAIRPERSON GIBSON: Okay, okay. And the reason being is because we just want to understand. I mean, this is a very intense process, and we obviously want to do as much as we can to make sure that anyone who is possessing a firearm and receiving a license from the Department understands some of the consequences, right, as being a permit holder that could happen with unintentional deaths and suicides and domestic incidents. So, do you also provide any information on best practices or guidelines on safe storage as well of their gun?

JONATHAN DAVID: We don't-- we don't have detailed guidelines about that. We do have-- we do state the law that they're required to safeguard their gun in a particular matter. If they have more than a certain number of guns, I think four, they have to safe. If they are not in the immediate

1 presence of their gun, their gun has to be unloaded
2 and trigger locked, but-- and those requirements are--
3 - those are stated in the pamphlet, and there's
4 actually a penal law provision that criminalizes the
5 failure to safeguard your gun in a proper way, and
6 that's in the rules that they're required to be
7 familiar with.

8
9 DIRECTOR CHERNYAVSKY: And that's the
10 acknowledgement that they ultimately sign.

11 CHAIRPERSON GIBSON: Okay.

12 DIRECTOR CHERNYAVSKY: Acknowledges that
13 they read the relevant provision.

14 CHAIRPERSON GIBSON: Okay, but nothing's
15 included in the pamphlet you're talking about?

16 JONATHAN DAVID: Well, they're just told
17 that they have to safeguard their weapon, but they're
18 not told specifically like how to go about doing
19 that. They're told if they're required to safeguard
20 their weapon if it's not in their immediate control
21 it has to be unloaded and it has to be trigger locked
22 to own [sic] it.

23 CHAIRPERSON GIBSON: Okay. I recall when
24 I served in the Assembly there was a number of bills
25 related to safe storage of guns that were circulating

1 in the Assembly. I'm not sure where they've gone, but
2 the current statute that you're talking about, is
3 that a state statute or a federal statute of failure
4 to safely store your gun?
5

6 JONATHAN DAVID: I believe it's in the
7 penal law.

8 CHAIRPERSON GIBSON: Okay.

9 JONATHAN DAVID: It's actually a penal
10 law crime not to, but I believe it's also restated,
11 stated in different levels of the law. It's stated, I
12 believe again in the administrative code.

13 CHAIRPERSON GIBSON: Okay.

14 JONATHAN DAVID: And it's also, I
15 believe, made reference to again in the rules stated
16 over and over again at local and state level.

17 CHAIRPERSON GIBSON: How many people
18 apply for gun licenses annually to this department?

19 JONATHAN DAVID: Okay, just a minute. We
20 have the number. I can tell you for starters we have
21 a number of licensees I can tell you at the top of my
22 head, 40, approximately 40,000 handgun licensees,
23 20,000 or so rifle or shotgun licensees. If you give
24 me a minute I can give you the number to date.

25 CHAIRPERSON GIBSON: That's annual?

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2 JONATHAN DAVID: That's the total that
3 we-- total active licensees. That's not--

4 CHAIRPERSON GIBSON: [interposing] Oh,
5 okay.

6 JONATHAN DAVID: That's not the answer to
7 your question, but that's the number I had off the
8 top of my head. Sorry. To answer to your question
9 specifically-- thanks. The total number of handgun
10 license applications to date for 2017, 1,865. Last
11 year for 2016 we had 3,147 handgun license
12 applications.

13 CHAIRPERSON GIBSON: Wow, okay.

14 JONATHAN DAVID: And we had this year we
15 have denied to date 500-- disapproved 528 of the
16 1,865 applications. No, not-- I'm sorry. We disa--
17 this year to date we disapproved 528 handgun
18 applications, not necessary applications that were
19 made this year, but 528 handgun applications had been
20 denied for calendar year 2017.

21 CHAIRPERSON GIBSON: Okay. And what's the
22 most common reason why a license is disapproved?
23 Does it vary across the spectrum or is there a
24 particular--

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2 JONATHAN DAVID: well, we don't really--
3 I don't have here today with me statistics about
4 that, so I can't tell you based on statistics, and
5 I'm not sure that our computer system can tell you
6 that exactly, but some of the common grounds are that
7 a person has been arrested, a person has some sort of
8 an arrest history. We look at the arrest and we look
9 at the-- how long ago it occurred, what it was for.
10 It's not an automatic bar, but it's discretionary
11 unless it was a felony conviction or certain
12 misdemeanors. Also, domestic violence is looked at,
13 domestic violence history. Those are two major ones,
14 arrests and domestic violence. We look at the--
15 basically we have a record of all of the person's
16 involvement, interactions with NYPD in the New York
17 City whatever it may be, arrests, summons, domestic
18 violence and then we also ask them to provide a DMV
19 abstract. We also look at-- we also have the mental
20 health history check that we do. So, those are some
21 of the major things that we look at.

22 CHAIRPERSON GIBSON: Okay, and then in
23 keep--

24 JONATHAN DAVID: [interposing] If they
25 have an open order of protection--

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CHAIRPERSON GIBSON: [interposing] Right.

JONATHAN DAVID: that's also very important.

CHAIRPERSON GIBSON: Okay. Well, I guess my two final questions on this topic, it's very, very interesting. Do you find that in your practice and in the division that licenses and grants these permits, that after have one of these just unbelievable mass shootings that we have across the country, it's typically said sometimes that the applicants for gun licenses does increase across the country. Do you notice that in New York City? Is that something where you're seeing more people applying for gun licenses after the effects of a mass shooting?

JONATHAN DAVID: I have to say that I really don't know the answer to that question.

CHAIRPERSON GIBSON: Okay.

JONATHAN DAVID: I'd have to get back.

CHAIRPERSON GIBSON: It's something I think about. Maybe I'm the only one that thinks about that.

JONATHAN DAVID: But certainly-- it's certainly something that I've notice just is a major

1
2 issue in people's minds always. This mass shooting
3 that occurred certainly made people-- drawn people's
4 attention to gun licensing in general and also
5 certainly that the tragedy that occurred has cost us
6 to review our rules and think about ensuring that we
7 have the best rules that we can for regulated gun
8 licensing.

9 CHAIRPERSON GIBSON: So, the legislation
10 before us, obviously there's a tremendous amount of
11 support in making sure that we continue to further
12 our education and promotion to those that are granted
13 a firearm license to be aware of the unintended
14 consequences, the risks that are involved. So, is
15 that something that the Department is willing to
16 consider the legislation before us that really talks
17 about an added level of education in addition to the
18 pamphlet you described, but specifically this one
19 that talks about, you know, accidental shootings,
20 suicide, domestic incidents, etcetera. Is that
21 something that you think would be useful and helpful
22 in your work?

23 DIRECTOR CHERNYAVSKY: We do, and we're
24 supportive of the legislation.

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COMMITTEE ON PUBLIC SAFETY

CHAIRPERSON GIBSON: Alright, great. I like to hear that. Okay, great. Let me check. Colleagues, are you ready? Council Member Lancman? Council Member Johnson, you guys ready for your questions? Okay. I'm just going to take a quick break. So I'm going to go to Council Member Lancman followed by Council Member Johnson.

COUNCIL MEMBER LANCMAN: Alright, thank you. Thank you, Madam Chairwoman. So, my bill, 1664, which would require the PD to report on fare beating stops. I understand from your testimony that you seem okay with it, except one particular aspect of it having to do with how you collect data. As I understand, and just to be clear, among other things that the bill would require the NYPD report, the total number of arrests, the total number of summonses, race, sex, and age of the arrestee, is in those circumstances where someone got a TAB summons, a Transit Adjudication Bureau summons for the MTA, as opposed to an arrest, the bill would require the reason the arrestee was not issued a summons, someone who was charged with theft of services under the penal law. And I understand your opposition or your concern to be you don't collect data that way. Just

1 to clarify if I'm not mistaken, there is in the
2 Patrol Guide a-- and if it's not in the Patrol Guide,
3 it's somewhere else, please correct me-- a set of
4 criteria that is supposed to be applied by the
5 officer making the stop, and if the boxes are checked
6 a certain way you go into the criminal justice system
7 and you're charged with a misdemeanor, and if the
8 boxes are checked a different way you go-- is it that
9 straightforward? Is it in the Patrol Guide?
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11 DIRECTOR CHERNYAVSKY: No, no, it's a
12 little bit of a nuance.

13 COUNCIL MEMBER LANCMAN: Go ahead.

14 DIRECTOR CHERNYAVSKY: What happens is
15 the officer in the field does not have that check
16 box. You're correct in saying that there are these
17 criteria which are, and I mentioned two felony or two
18 misdemeanor arrest in the prior two years or a sex
19 crime in the transit system or I think multiple
20 violations--

21 COUNCIL MEMBER LANCMAN: [interposing]
22 Whatever it is.

23 DIRECTOR CHERNYAVSKY: Whatever it is,
24 but what happens is that the officer making the stop
25 for fare evasion would simply run the individual much

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2 like a warrant check to see if the individual has a
3 warrant. All the officer gets back is transit
4 recidivist or not transit recidivist. If it's not
5 transit recidivist, then they get a civil summons.
6 If it is transit recidivist, they're ineligible for a
7 civil summons. They'd get arrested, but even of
8 those that get arrested, many of them get a desk
9 appearance ticket. So they get released from the
10 station house. But to your point, it's that
11 disaggregation of which one of those factors within
12 the transit recidivist definition resulted in--

13 COUNCIL MEMBER LANCMAN: [interposing] So,
14 a transit--

15 DIRECTOR CHERNYAVSKY: individual not
16 qualifying.

17 COUNCIL MEMBER LANCMAN: A transit
18 recidivist is not literally someone who has repeated--
19 - is not merely limited to--

20 DIRECTOR CHERNYAVSKY: [interposing]
21 Correct.

22 COUNCIL MEMBER LANCMAN: someone who has
23 repeatedly. If they meet these other requirements--

24 DIRECTOR CHERNYAVSKY: [interposing]
25 That--

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2 COUNCIL MEMBER LANCMAN: even if they've
3 never jumped a turnstile before in their life, but
4 those people are still-- the term is used a transit
5 recidivist.

6 DIRECTOR CHERNYAVSKY: Correct.

7 COUNCIL MEMBER LANCMAN: And who's making
8 that determination? Like, the officers calling in
9 the person's info back to somewhere, and then that
10 person's going through this checklist, and then that
11 person is reporting to the officer, recidivist, not
12 recidivist?

13 DIRECTOR CHERNYAVSKY: Well, I mean it's
14 computerized much like a warrant check, the name is
15 run and it's a merging of a variety of databases from
16 the state from internal arrest databases that
17 contribute, and the answer is whether or not this
18 individual was a prior, you know, was a--

19 COUNCIL MEMBER LANCMAN: [interposing] So,
20 this things that would trigger someone being a
21 recidivist and someone being ineligible for a civil
22 summons are-- it's a purely a mathematical
23 computational formulation. You enter the person's
24 name in the computer and out spits whether or not the
25 person meets the criteria or doesn't meet the

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2 criteria. There's no one anywhere exercising any
3 judgement or even doing any, you know, manual
4 checking of the person's record.

5 DIRECTOR CHERNYAVSKY: No, I mean,
6 there's not a manual checking, of course. You know,
7 ultimately officers have discretion in each
8 situation--

9 COUNCIL MEMBER LANCMAN: [interposing] No,
10 I get it. That you--

11 DIRECTOR CHERNYAVSKY: The unique
12 situations, but let's not make the exception the
13 rule.

14 COUNCIL MEMBER LANCMAN: Right.

15 DIRECTOR CHERNYAVSKY: By in large, and
16 to that point I say 75 percent of the individuals
17 that we come in contact with for theft of service
18 receive the civil summons.

19 COUNCIL MEMBER LANCMAN: so, I
20 understand. So, when he officer, when the officer
21 puts the person's name into the computer and out
22 spits transit recidivist, is any explanation given to
23 the person who's stopped, like, this guy is getting a
24 civil summons, but you're getting arrested because
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2 you had whatever, two felonies or whatever the
3 criteria is?

4 CHIEF COOGAN: I mean, when a person gets
5 arrested, yes, they're given an explanation that
6 they're a transit recidivist; they fall under this
7 policy that they--

8 COUNCIL MEMBER LANCMAN: [interposing]
9 But are they told why they're a recidivist? Because
10 there are different reasons that you could be a
11 transit recidivist.

12 CHIEF COOGAN: I mean, an officer can
13 look back and you can pretty much possibly see why he
14 would be a transit recidivist if he falls into one of
15 these five different categories, which I can give you
16 if you want.

17 COUNCIL MEMBER LANCMAN: No, no--

18 DIRECTOR CHERNYAVSKY: [interposing] I
19 mean, ultimately, Council Member, I think what you're
20 trying to get at is, you know, an officer can
21 manually run, I guess, your arrest record or run
22 these various points when dealing with-- I think, the
23 issue-- I think what the Chief is saying and what
24 you're saying is we will tell an individual that
25 you're ineligible because you're a transit

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2 recidivist. We can say these are the things that
3 make a transit recidivist, and I would imagine the
4 individual would know if they were arrested on two
5 felonies, or they've received three civil summonses
6 over the last two years or where exactly they fall
7 in. I mean, these are things that are known to the
8 individuals.

9 COUNCIL MEMBER LANCMAN: Right. So,
10 right. So, what we're getting to, though, for the
11 purpose of this bill, right? Not all our other
12 agreements or disagreements on how the police police
13 this particular activity. But for the purpose of this
14 bill, how difficult would be to collect the data and
15 record the data and note the data for the people who
16 are getting arrested and are being charged with theft
17 of services, why it is they qualified as a transit
18 recidivist. Because that's what-- that's the part of
19 the bill that you're concerned. The reason the
20 arrestee was not issued a summons returnable to the
21 Transit Adjudication Bureau, presumably the reason is
22 they're transit recidivist, and we really want to
23 know why are they transit recidivists. Like, it's in
24 the system.

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2 DIRECTOR CHERNYAVSKY: Well, I think--
3 again, I'm not a technology expert. Usually when
4 these sort of bills pass, you know, we've all worked
5 on them and had some experience to whether it was
6 with summons reform or any of the other reporting
7 bills. When the IT people get involved they can
8 certainly explain it better, but you know, based on
9 my basic understanding it would be the same issue
10 that we've had with all of these other bills. It
11 would be the merge-- the necessity to merge
12 databases, some of which are not under our control,
13 and you know for example, I'll give you one example
14 with summons with CJRA. It was a matter what took
15 upwards of a year to do was merging with OATH and
16 having access to see what is or isn't the recidivist
17 in their system, meaning an individual that keeps
18 getting civil summonses, right, to work into the
19 criteria. I mean, this would require merging of MTA
20 databases and getting that type--

21 COUNCIL MEMBER LANCMAN: [interposing] I'm
22 not an IT person either. I don't think that that's
23 case, though, because the information is there. It's
24 what's be-- it has to be there because it's spitting
25 out a result for this person, "Lancman arrest." It's

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2 there but it's creating a system where on the case by
3 case, person by person basis that information is then
4 collected--

5 COUNCIL MEMBER LANCMAN: [interposing]

6 Right.

7 DIRECTOR CHERNYAVSKY: and stored and
8 married to that person.

9 COUNCIL MEMBER LANCMAN: Yes.

10 DIRECTOR CHERNYAVSKY: And that's always
11 the issue and that's always the hard part. If the
12 system doesn't already exist, it's a costly and time
13 consuming system to build.

14 COUNCIL MEMBER LANCMAN: It may be.

15 DIRECTOR CHERNYAVSKY: Yes.

16 COUNCIL MEMBER LANCMAN: It may not be.

17 DIRECTOR CHERNYAVSKY: Well,--

18 COUNCIL MEMBER LANCMAN: [interposing]

19 You're not an IT person.

20 DIRECTOR CHERNYAVSKY: Yeah, but--

21 COUNCIL MEMBER LANCMAN: [interposing]

22 You've confessed to not being an IT guy.

23 DIRECTOR CHERNYAVSKY: Yes, I--

24 COUNCIL MEMBER LANCMAN: [interposing]

25 I've confessed, too.

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COMMITTEE ON PUBLIC SAFETY

DIRECTOR CHERNYAVSKY: Yes.

COUNCIL MEMBER LANCMAN: We're both guilty of not being IT people.

DIRECTOR CHERNYAVSKY: Yeah.

COUNCIL MEMBER LANCMAN: Alright. I'd like to continue this conversation and not the usual manner where I send you letter and I get one back six months later, but like a good one where we can sit and talk about it with someone who actually is an IT person.

DIRECTOR CHERNYAVSKY: Absolutely.

COUNCIL MEMBER LANCMAN: Terrific. Thank you very much.

CHAIRPERSON GIBSON: Okay. Thank you so much, Council Member Lancman. I'm going to continue in the absence of Council Member Johnson, and I'm going to ask specifically about the preconsidered intro that's on our agenda sponsored by the Speaker that relates to requiring MOCJ to make the efforts to address outstanding criminal warrants and issue an annual report related to these activities. In your testimony, Alex, you talked about OCA and NYPD as well as the warrant system, there being some sort of

1 a merging. Can you give me an idea in terms of the
2 timeline of when this is going to happen?

3 ALEX CROHN: So, as far as the-- do you
4 mean the 600,000 warrants that were clear, or you do
5 mean just aesthetically making sure that the systems
6 talk to each other? Because it's two different
7 questions?

8 CHAIRPERSON GIBSON: I always want to make
9 sure we're talking to each other. So, I guess, yes,
10 the latter part, but then also the 600,000 that we
11 talked about with the four district attorneys, when
12 you will actually see that on the system.

13 ALEX CROHN: So, that, I'll start with
14 that one because it's easier. So, most of them have
15 actually been vacated in all of the systems. There's
16 a little bit of a legacy system at OCA that still
17 needs to be caught up. I think it's around 30,000
18 are remaining, but the vast majority of the warrants
19 have been vacated and no longer appear on anybody's
20 records. So, that was good and it was a lot of very
21 hard work by OCA and working very closely with the
22 PD. The larger question about the systems talking to
23 each other, you know, I won't speak for the PD, but I
24 know that, you know, as a result of this warrant-

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2 clearing process there's been a lot of really great
3 conversations between the IT people at OCA and the IT
4 people at PD on ensuring that those databases talk to
5 each other, and that work had been ongoing actually
6 before this as well as there had been a discussion
7 about making sure the databases are married. I think
8 they're in a pretty good spot. I don't know if Oleg
9 has any more details on that other than that work is
10 ongoing and I think is overdue and a good step
11 forward in the system.

12 CHAIRPERSON GIBSON: Okay. Great. That's
13 good to hear. Do we know how many, today, how many
14 misdemeanor warrants are currently active? Is that
15 something that MOCJ would--

16 ALEX CROHN: [interposing] Off the top of
17 my head--

18 CHAIRPERSON GIBSON: know?

19 ALEX CROHN: I don't. I believe the
20 total number of warrants before we cleared was 1.5
21 million. So, it's under a million at this point with
22 the reduction of the summonses, but that includes
23 felony warrants. You know, that's not just summons
24 warrants.

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COMMITTEE ON PUBLIC SAFETY

CHAIRPERSON GIBSON: Okay, misdemeanor and felony, okay.

ALEX CROHN: Correct.

CHAIRPERSON GIBSON: That's a lot.

ALEX CROHN: It is a lot, and you know, I think we think it's a lot as well, which is why, you know, this clearing of the warrants is not our only warrant initiative. You know, I think going forward there will be a significant reduction in the number that are issued, largely because of the CJRA, you know, a lot of them are summons warrants, and a good amount of those will no longer result in a warrant, but we're thinking sort of more holistically about how to get people to come back to court, how to sort of destigmatize showing up to court and really having people clear their own warrants because they can, and most people just don't know about it.

CHAIRPERSON GIBSON: Okay. What is the Department, what is MOCJ doing, like you said, to just increase New Yorkers' ability to understand what's happening with their outstanding warrants, how they can really come to get them clear. I mean, the challenge, unfortunately, that we're dealing with is that many New Yorkers just don't feel safe going to

1 court. Sometimes when they leave court there are
2 individuals waiting to arrest them, right? It
3 happens, and it's been happening more often than not
4 with some of the non-local law enforcement agencies,
5 specifically, and I've known that to be the case.
6 I've talked to many of the public defenders and that
7 has been the case. So, understanding that that's
8 going on, how do we provide more assurance for New
9 Yorkers that they can be safe coming to court,
10 letting them know what's going on with their warrant
11 and how they can get it cleared up?

13 ALEX CROHN: Yeah, I mean, that's the--
14 it's the million-dollar question. So, luckily, you
15 know, we haven't seen that sort of enforcement in
16 sort of the summons context. So, our message is
17 always that the summons courts are open and you can
18 go and clear your warrant at any time. You don't
19 even have to go to the borough that your warrant
20 exists. You can go to any summons court. You can
21 clear any summons in any borough. But we've actually
22 hired a firm to interview New Yorkers, interview
23 people who are in the system, interview public
24 defenders to find out sort of what is impeding people
25 from coming back to court and clearing their

1 warrants. Our hypothesis, a lot of people just don't
2 know they have warrants, and then we're hoping to
3 roll out some interventions as a result of that
4 research to get people to pro-actively clear their
5 warrants. You know, I think the work of the District
6 Attorneys and their Begin Again programs or, you
7 know, each of the District Attorney's offices have
8 their sort of name have been great, but what we
9 really want is a more systemic sort of always come
10 in. So, that's research that's going on right now,
11 and I think we should have results, you know, by
12 early next year.

14 CHAIRPERSON GIBSON: Okay. With the
15 expected merging of the warrant systems both for the
16 city and the state, do you think that it would be
17 easier for MOCJ to look at the legislation, 1636,
18 that Council Member Johnson is proposing that would
19 ensure that we try to address erroneous criminal
20 records. While I know it's a challenge, because we
21 do have to rely on our partnership and relationship
22 with the state, but for every mistake or error that's
23 made it's someone's life and their future that is the
24 consequence. And so, obviously, to the extent that
25 we can avoid that, we certainly all want to do, and

1 so in the world that I live in, right, a city
2 official, formerly a state official, we just have to
3 do work together. We don't have a choice. So, do
4 you think that once the merger happens it would be
5 easier to try to address erroneous records and be
6 able to satisfy a lot of those errors that were done
7 and get them corrected?

9 ALEX CROHN: So, I agree, it's not
10 something where we can just throw up our hands and
11 say, "Well, it's the state, so there's nothing we can
12 do." So, I think we're eager to have conversations
13 with the state about this topic. Ultimately, you
14 know, I'm sure the Law Department will be very sort
15 of vigilant about committing a legislation to
16 creating that process just because, you know, once
17 you start those conversations there's a million
18 reasons why people, you know, throw up barriers, and
19 you try to break them down, but just being
20 legislative required to come to a solution with
21 people you don't control is always the challenge, but
22 I think we definitely support the goal, and we want
23 to work towards a system where, you know, clearing
24 rap sheets is something that's easier than it is
25 right now.

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CHAIRPERSON GIBSON: Okay. Yes, we used to call them rap sheets, yes, that's right. Do you know, does anyone, does MOCJ keep a record of how many errors are on criminal records today?

ALEX CROHN: We don't.

CHAIRPERSON GIBSON: Do you know who does?

ALEX CROHN: Well, I heard some stats from the Legal Action Center. I, you know, I don't know where those are derived from. Certainly we hear a lot anecdotally. Certainly people have information we'd be happy to hear it, but I think a lot of it is unknown because it's until a defense attorney or a client sees the sheet and says, "Oh wow, wait, this was supposed to be sealed," or "I wasn't convicted of that," or "This case was disposed." So, a lot of the errors are unknown.

CHAIRPERSON GIBSON: Okay. I believe Legal Action Center is here and will testify later, but someone should be responsible for maintaining the accuracy of criminal records. Don't you agree?

ALEX CROHN: I agree. I don't want to point to the state, but you know, DCJS that is their responsibility at the end of the day is to maintain criminal records, but again, there's a lot of

1 information that flows in there. So, I'm not blaming
2 DCJS certainly not, you know? Paperwork gets mixed
3 up, but it's not excusable, but it does happen and a
4 lot of people have a hand in that, which is I
5 understand why what the impetus for this legislation
6 is and why we think it's a laudable goal.

8 CHAIRPERSON GIBSON: Right, okay. So,
9 while Council Member Johnson's not here, but I
10 certainly know that the thought behind the
11 legislation itself was to ensure that everyone's
12 records obviously are clear, but if we are looking at
13 the existing records of how many errors there are on
14 individuals' criminal records, I am absolutely sure
15 that there is a pattern with men and women of color
16 that are obviously more subjected to having errors on
17 their criminal records, and that's unacceptable.
18 It's unacceptable for anyone to have it ever on their
19 record, but let alone, a target population. So, it's
20 important for this Council. It's important for all
21 of us to make sure that we continue to talk about
22 this issue because whether it's MOCJ or OCA or DCJS,
23 somebody needs to take responsibility for maintaining
24 the accuracy of criminal records. I think it's fair
25 to say that everyone has a right to make sure that

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2 their record is clear, because your record
3 essentially is your name and your character and who
4 you are, and you know, we use that to judge people in
5 terms of their future, their future employment, their
6 future ability to be a good citizen, right? And so
7 all of that is weighed in terms of an individual, and
8 so if your record is messed up, then your character
9 is flawed, and I think that's, you know, an argument
10 that many young people say all the time, you know,
11 it's not who I am, but this is the record on paper.
12 So, I hope that we'll continue to keep talking to
13 MOCJ about this to make sure that we can get to some
14 sort of a resolution on erroneous records.

15 ALEX CROHN: Absolutely.

16 CHAIRPERSON GIBSON: Okay, great thank
17 you. I believe the last item I wanted to just raise
18 is another pre-considered resolution. I wanted to
19 ask specifically about the Hearing Protection Act-- I
20 don't like that name. the Hearing Protection Act of
21 2017 which is essentially the firearm licenser bill,
22 and I wanted to get, obviously I know it's a pre-
23 considered resolution, but would there be any way in
24 the City of New York that someone today could legally
25 obtain a silencer in New York City?

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2 DIRECTOR CHERNYAVSKY: No, silencers are
3 illegal under the state penal law, and I believe so
4 are the weapons that can accept a silencer. However,
5 with respect to the legislation moving around DC, I
6 think what this bill does is one that reviews the
7 heavy tax that's applied to the purchase of silencers
8 because although they're illegal in New York State,
9 they are legal in other states. I don't have the
10 list of what they are, but I believe it was over 10
11 states where silencers are legal. So, oen it would
12 remove the heavy tax on silencers. Two, it would
13 eliminate the need for an incident looking to
14 purchase a silencer to undergo a background check
15 which I believe is the case now under federal law.
16 So, I mean, our concern with respect to this bill
17 would be one, how would that interplay with state
18 law? Does that essentially override? Is there a--
19 does the state law become a pre-emption issue, in
20 which case these silencers would be able to bleed
21 into New York State? Two, even if that's not the
22 case, I think the increased demand for silencers will
23 result in the increased projection of silencers.
24 There by, leading to the increased availability of
25 silencers and the detriment here at least with the

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2 one it would impeach on spotter's ability to detect
3 gun shots. Two, it would impede the ability of
4 individuals that hear gunshots and report shots fired
5 through 911. It would impede their ability to
6 actually recognize that a shot has been fired, which
7 in turn would lead to us having delayed responses to
8 the scenes of shootings potentially if the shooting
9 happened within a house or an apartment, the
10 neighbors wouldn't be able to hear that the shot
11 happened, and we may very well be responding to
12 complaints of a foul odor in an apartment building
13 which would be an individual that was shot possibly
14 days if not weeks before, although nobody would have
15 heard the shot happen. So, we have many concerns
16 over that legislation.

17 CHAIRPERSON GIBSON: Okay, I share your
18 concerns, and I think moving forward, you know, the
19 real possibility that this Hearing Protection Act may
20 pass in both houses is a scary thing. It's scary to
21 even talk about the possibility having silencers
22 permitted in this city and this state. Do you know
23 if the Department is planning or is there anything
24 that the Department is looking to do to make sure
25 that we raise our voices of opposition to make sure

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2 that our-- especially our New York delegation is
3 aware of what's pending in both houses and making
4 sure that they understand that we are unequivocally
5 without doubt opposed to this measure?

6 DIRECTOR CHERNYAVSKY: Yeah, so I can
7 tell you with certainty that both the Police
8 Commissioner and the Mayor have been very forceful on
9 their opposition to both the silencer law, the
10 Hearing Protection Act, as well as the Conceal Carry
11 Reciprocity Act, and they have spoken to our
12 delegation and have voiced their serious concerns
13 with respect to the legislation.

14 CHAIRPERSON GIBSON: Okay, more to come.
15 I don't think in light of everything going on we
16 certainly don't want these proposals to move without
17 us making sure that we are extremely voiceful [sic].
18 This city, this Administration, we've done so much
19 work on Cure Violence and Anti-Gun Violence
20 initiatives, all of the advocacy groups, I mean, we
21 have done a tremendous amount of work. I refuse to
22 let my work go for not. This is something that's
23 going to have a detrimental impact on New Yorkers and
24 make us unsafe, and certainly, you know, whatever we
25 need to keep doing, we have to continue to raise the

1 conversation. It's unfortunate that so many
2 residents that we know in my district and all across
3 the City have been impacted by gun violence. I told
4 the Chief that last week I visited a mother in my
5 district whose son was murdered, and she just came
6 back from burying him. She took him back home, and
7 you know, now mom wants to relocate. She doesn't
8 want to live in the Bronx anymore, and I can't blame
9 her. I don't blame a mom for living in her apartment
10 for almost 30 years for now wanting to move because
11 she doesn't want to live in the house where her son
12 lived with her who is no longer here, and those
13 stories we hear far too often, and we know that this
14 is because of the plague of illegal handguns that we
15 have across our city. So, I appreciate the efforts
16 of the Department and certainly ask you to continue
17 to raise your voices and certainly as we can be of
18 support, we definitely want to make sure we do as
19 well.
20

21 DIRECTOR CHERNYAVSKY: You're right, and
22 it should be said that we appreciate your support and
23 the support of the Council in the fight against what
24 could be what's potentially very dangerous
25 legislation.

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2 CHAIRPERSON GIBSON: Okay. Well, thank
3 you very much. With that, my colleague did not
4 return, so I'm going to thank this panel for coming
5 today and certainly your work, your commitment, your
6 testimony, and we look forward to continuing the
7 conversation on not just the legislation before the
8 committee, but I think for me as Chair it allows an
9 opportunity to further understand how the Detective
10 Bureau works, how we focus on clearance rates and you
11 know, dealing with the seven major index crimes, how
12 we focus on traffic and transit violations, how we
13 focus on the warrant system and erroneous records. I
14 mean, this is all relative to creating a safer city
15 but also allowing us to be more efficient in the work
16 we do. So, while there was a legislative agenda of
17 legislation and resolutions, certainly the topics are
18 very meaningful and we will continue to talk about
19 those in the days ahead. So, I thank you for coming,
20 and as I always do, you know it's my practice, I ask
21 you to leave someone behind, both from MOCJ and the
22 NYPD to hear the remaining testimony from our legal
23 service providers and many of the advocates that are
24 going to offer some very thoughtful testimony on
25 today's agenda. So, if you could do that we would

1 really appreciate it, and we thank you once again for
2 coming. Thank you. Do we have-- okay. Thank you
3 once again to our first panel. Our next panel is
4 someone who I know very well, a former colleague of
5 mine I had the honor of serving with in the New York
6 State Assembly. He is the prime sponsor of
7 legislation before the state, before the Governor
8 that focuses on a very important topic that we are
9 discussing today and have been discussing relating to
10 gravity knives, Assembly Bill 5667A and Senate Bill
11 S4769A in relation to gravity knives in New York
12 State. I'd like to recognize and have him come
13 forward, the Assembly Member of the 73rd District,
14 Assembly Member Dan Quart. Welcome. Thank you for
15 joining us. Is your mic on?
16

17 ASSEMBLY MEMBER QUART: Yes.

18 CHAIRPERSON GIBSON: Oh, okay, great. You
19 can begin. Thanks again.

20 ASSEMBLY MEMBER QUART: Thank you for an
21 opportunity to speak at today's hearing, and thank
22 you to Council Member and Chair Gibson for
23 introducing Resolution Number 1660. I'm deeply
24 appreciative of you bringing this issue to the
25 Council's attention and for your leadership on the

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2 issue. In 1958 the State Legislature enacted the
3 original gravity knives statute to prohibit
4 possession of a World War II era German weapon that
5 opened by the force of gravity. Since then,
6 enforcement of the statute has expanded, primarily in
7 Manhattan, to apply to any common folding knife. As
8 Council Member Gibson will note in her resolution,
9 between four and five thousand New Yorkers are
10 arrested every year for possession of a simple pocket
11 knife. In effect, a state law has been used by
12 police and prosecutors in one area of the state to
13 outlaw a tool that is perfectly legal in the rest of
14 the state. This practice has left New Yorkers in an
15 untenable situation. What's worse, these knives are
16 widely available from online retailers in stores
17 outside of New York City, as well as retailers right
18 here in Manhattan. While the Manhattan District
19 Attorney, Cy Vance, garnered plenty of press coverage
20 in 2010 by cracking down on these retailers, seizing
21 their inventory and fining retailers over 900,000
22 dollars. He never fulfilled his promise to spend
23 that money on a knife education program to inform New
24 Yorkers of what knives he would prosecute them for
25 possessing. How can New Yorkers possibly be expected

1 to understand what knives are legal under these
2 circumstances. Even more telling, when District
3 Attorney Vance negotiated deferred prosecution
4 agreements with thee retailers, he allowed one
5 retailer, Paragon Sports, to continue selling
6 expensive knives that he otherwise would have found
7 in violation of the penal code simply because they
8 carried a high price tag. As one of the Assistant
9 District Attorneys explained during a deposition, the
10 DA did not believe that expensive knives would be
11 used to commit violent acts, so those knives were
12 exempted. While those who can afford to pay top
13 dollar for higher-end knives have experienced no
14 consequences under this regime, New Yorkers who need
15 an affordable folding knife for work have been
16 arrested and prosecuted in droves since District
17 Attorney Vance took office in Manhattan. The racial
18 disparities in enforcement practices are equally as
19 appalling. Eight-six percent of those arrested or
20 charged with pocket-knife possession are black and
21 Hispanic, and people of color face stronger penalties
22 at each step of the prosecutorial process from arrest
23 to arraignment to sentencing. Over the last several
24 years I've worked with my colleagues, Senator Diane
25

1 Savino to pass legislation that would end this
2 plainly discriminatory practice. Our coalition is
3 unprecedently [sic] broad including everyone from
4 upstate Second Amendment supports to Legal Aid and
5 other public defenders, from the Safari Club to the
6 NAACP Legal Defense Fund. This legislation passed
7 nearly unanimously in each house of the legislature.
8 In a time of deep political polarization, New Yorkers
9 from all across the political spectrum and from every
10 corner of the state have come together to say that it
11 is long pass time to fix our broken knife laws.
12 However, no support could have as much impact as that
13 of the New York City Council. Each Council Member
14 sees the impact of this discriminatory enforcement
15 every day in your districts, whether your
16 constituents live in Manhattan or simply travel here
17 into Manhattan. The Council support of this
18 legislation is a clear message to the Governor that
19 he should stand with every-day New Yorkers, the
20 working New Yorkers, and the New Yorkers of color who
21 have been unfairly effected by this unjust policy and
22 not with District Attorney Cy Vance of Manhattan. I
23 urge you to vote yes on this resolution, and I thank
24 you for the opportunity to testify.

1
2 CHAIRPERSON GIBSON: Thank you, Assembly
3 Member. I appreciate your presence, your testimony
4 and certainly your leadership along with Senator
5 Diane Savino has been amazing, and I do know that the
6 Assembly-- the Senate passed it unanimously, and the
7 Assembly had passed by a vote of--

8 ASSEMBLY MEMBER QUART: I think 120 to
9 one, or--

10 CHAIRPERSON GIBSON: [interposing] It was
11 one Assembly Member that voted no?

12 ASSEMBLY MEMBER QUART: One of our-- one
13 of your former colleagues voted no to this.

14 CHAIRPERSON GIBSON: So, I wanted to ask
15 a question. I know in your testimony and just in
16 general we've talked a lot about DA Vance. I mean,
17 he was one of the heavy DAs, including the DA's
18 Association that was opposed to the measure. Have
19 the other four District Attorneys of the City of New
20 York weighed in on this? Because obviously gravity
21 knives are an issue that's happening across the state
22 of New York, but obviously most prevalent in New York
23 County, but have you received any feedback from the
24 other four DA's?

1
2 ASSEMBLY MEMBER QUART: I think the
3 criticism of District Attorney Vance has been
4 appropriate in that he prosecutes these matters four
5 times more than all the other DA's combined.
6 Specifically, if you look at the numbers of other
7 District Attorneys in New York City, while there
8 continues to be some prosecution, and in my view one
9 prosecution is too much, the numbers are plainly much
10 smaller in the other four boroughs. I have not had
11 specific contact. I don't know the position of each
12 of the other four District Attorneys with respect to
13 my legislation, but certainly the prosecutor levels
14 in the Bronx, in Queens, in Brooklyn, and in Staten
15 Island are far lower and far more reduced than what
16 they are in Manhattan.

17 CHAIRPERSON GIBSON: Okay, so can you
18 answer a question. It seems like the City of New
19 York moves forward in prosecuting these cases as
20 compared to other parts of New York State. So,
21 because there is a dominance in the minority
22 community, African-American and Latino men and women,
23 are you noticing that in some of the other five
24 regions? And when I say five regions, obviously New
25 York City, but I also want to include maybe Yonkers,

1
2 Syracuse, Rochester, and Buffalo, right? The big
3 five.

4 ASSEMBLY MEMBER QUART: Yes, in upstate
5 communities where there are large minority
6 communities as well, Buffalo and other parts of the
7 state, I am not aware of any District Attorney who
8 prosecutes gravity knife laws. This is a wholly New
9 York City approach, and it is even within that
10 context, it is the District Attorney here in
11 Manhattan, Cy Vance more so than any of the other
12 four DA's who prosecutes this particular offense.
13 So, the answer to your question is I'm not aware of
14 any District Attorney outside of New York City who
15 prosecutes this penal code or penal law violation.

16 CHAIRPERSON GIBSON: And from your
17 understanding, I know you've done a lot of work on
18 this legislation, and I know how hard it is to get
19 bills passed in this state, right? So, I commend you
20 that you have not only gotten it through the
21 Assembly, but also the Senate, and it, you know, lies
22 with the Governor to sign into local law. The common
23 scenario of young men and women who are arrested for
24 gravity knives is it typically because many of them
25 have in their possession gravity knives for the

1
2 purposes of work, or are there other reasons that you
3 have found. So, tell me a little bit about-- from
4 your perspective, right? Because I'm going to speak
5 to a lot of the legal advocates as well that
6 represent many of their clients that are caught up
7 with gravity knives, but from your perspective, what
8 has been the common scenario of many New Yorkers that
9 are arrested for possession of gravity knives?

10 ASSEMBLY MEMBER QUART: Well, I think
11 certainly my fellow colleagues and practicing
12 attorneys can provide you greater description because
13 they're the ones each and every day standing in a
14 courtroom defending people who have been arrested on
15 this, but I'll say from my experience and from my
16 limited experience also being in the courtroom and
17 having defended an actual gravity knives case, it was
18 a workplace situation. The individual in his
19 particular circumstances was on his way to work. He
20 was stopped for reasons he didn't even understand,
21 and then the officer performed a "flick test," which
22 the Legal Aid attorneys will describe in greater
23 detail and he was arrested, but what was significant
24 to me is that he matter was disposed of at the
25 arraignment part in the first instance, and that

1 tells you a lot, because it tells you we're dealing
2 with working people. And there's been discussions
3 about District Attorney Vance set forth that there
4 should be an affirmative defense, but for most
5 working people, they don't have the opportunity to
6 have multiple days off. They can't take days off
7 from work or they have childcare responsibilities.
8 They can't come back to court. So, they plead to
9 whatever the District Attorney's offer is because
10 they know they can't afford to come back to court.
11 That's why this crime as it's been prosecuted by the
12 District Attorney and specifically Cy Vance is so
13 disproportionate to working people, because it
14 punishes them even more. It punishes poverty, and
15 that's why I have fought for three or four years with
16 the advocates and Legal Aid Society to get to a point
17 where we can say that something that isn't criminal
18 is no longer punished by the penal law of the state
19 of New York.

21 CHAIRPERSON GIBSON: Okay. I agree. In
22 your testimony you talked about one of the ADAs in
23 New York County describing a defendant that had an
24 expensive knife that they assumed would be used--
25

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2 that they did not believe would be used to commit a
3 violent act.

4 ASSEMBLY MEMBER QUART: Yes.

5 CHAIRPERSON GIBSON: So, are we saying
6 that those that have the less expensive and more
7 affordable knives are more likely to commit a crime
8 with the gravity knife?

9 ASSEMBLY MEMBER QUART: We are not saying
10 that. Cy Vance--

11 CHAIRPERSON GIBSON: [interposing] Not we-

12 -

13 ASSEMBLY MEMBER QUART: the District
14 Attorney in Manhattan is saying that by his deferred
15 prosecution agreement he makes clear that he is the
16 arbiter of which knives are used for what purpose,
17 and by the terms of that deferred prosecution
18 agreement, Cy Vance believes that higher end knives
19 purchased by people who have the financial means to
20 buy higher end knives are not worthy of being
21 prosecuted by his office, but working people, poor
22 people, thousands of people. Thousands of people,
23 4,000 people a year, many in Manhattan, he deems
24 those people worth prosecuting.

1
2 CHAIRPERSON GIBSON: Okay. Right, I'm
3 glad you clarified it. I didn't mean "we" as in us.

4 ASSEMBLY MEMBER QUART: No, I--

5 CHAIRPERSON GIBSON: The other question I
6 have is, you know, and representing community of men
7 and women of color that, you know, face harsher
8 penalties under what we want to be an equal system of
9 justice, and not one system for those that can afford
10 a lawyer and those that cannot be subjected to less
11 representation and ultimately ending up convicted of
12 possessing a gravity knife. There are a lot of New
13 Yorkers that are sitting in prison today because they
14 have been convicted of possessing gravity knives, and
15 to every effort that we can give them a second
16 chance, allow them an opportunity to number one, be
17 released, and have a second opportunity at life, but
18 also the preventive work that we do. I like to do
19 preventive work as well as reacting to a crisis, and
20 I think, you know, outside of your legislation this
21 is a topic that has not received a lot of widespread
22 conversation, right? And so I'm grateful that the
23 legislation is raising that level of awareness. It's
24 stimulating a real conversation, and so having the
25 resolution on today's agenda was really an

1
2 opportunity to do that. There are a lot of
3 individuals that are affected every single day by
4 gravity knives, and unless you're one of them or you
5 know someone, most people don't understand what's
6 happening. So, I wanted to ask specifically how can
7 we level of the playing field, so if you are a
8 carpenter or an electrician and you have a gravity
9 knives for the purposes of work. Let's say you
10 purchased that at Home Depot or a local hardware
11 store, right? There are many in the industry that
12 are saying we should hold the sellers of these
13 products to some level of standard. So if it's
14 deemed legal and you're able to purchase it at a
15 local store, then why are we subjecting the
16 individual to one standard of justice and not holding
17 the local hardware stores accountable as well?

18 ASSEMBLY MEMBER QUART: That's absolutely
19 right. There has been no effort made by city
20 government or any District Attorney's office to
21 really hold on a widespread basis retailers
22 responsible for selling folding knives that open by
23 force of gravity. It's been the worst of both
24 worlds. There's been no effort to regulate the
25 retailers, but at the same time there's been a

1
2 disproportionate effort to punish those who purchase
3 those folding knives from these realtors. So, it's
4 been the worst of both worlds in the way in which
5 gravity knives has been not enforced and then
6 prosecuted.

7 CHAIRPERSON GIBSON: Okay. And I guess
8 my final question is the million-dollar question. Do
9 we expect the Governor to sign this legislation into
10 law?

11 ASSEMBLY MEMBER QUART: We do. I do, and
12 I think the two questions earlier, and I really want
13 to thank you, Madam Chair, for bringing this, but
14 when the Legal Aid attorneys speak you'll hear about
15 a term I know you know, but maybe people listening
16 will hear, called a bump-up. That is one of the
17 worst things. You talk about people in state prison
18 for possession of a folding knife. Many people at
19 home are listening, New Yorkers, they can't believe
20 that it's true, but it is true, and you're going to
21 hear from the Legal Aid lawyers who talk about a
22 bump-up, and what it is to be representing a client,
23 and disproportionately, and almost always a person of
24 color, and they're going to state prison because they
25 had possession of a folding knife. These are real

1 stories about New Yorkers who are suffering grievous
2 consequence for something they purchased in a
3 hardware store. So, my hope is the Governor, when
4 he's contemplating signing this bill he thinks about
5 those individuals, those New Yorkers, and if he does
6 I'm cautiously optimistic he will sign this
7 legislation.

9 CHAIRPERSON GIBSON: Is this the first
10 piece of legislation that's been proposed,
11 potentially enacted since 1950?

12 ASSEMBLY MEMBER QUART: Fifty-eight. I
13 don't think there's been--

14 CHAIRPERSON GIBSON: [interposing] Other
15 than changes you describe by the Manhattan DA, I
16 mean, has there been a lot of work on this in the
17 state?

18 ASSEMBLY MEMBER QUART: No, I'm not aware
19 of any other legislative activity on this bill. In
20 fairness, I think our difficult history with "Stop
21 and Frisk" and gravity knives, folding knives being a
22 predicate for those stops highlighted the need for
23 legislation. So, it is, I think historically it's a
24 more recent phenomena, this overzealous prosecution
25 of people carrying folding knives.

1
2 CHAIRPERSON GIBSON: Okay. Well, I think
3 that's it. Thank you--

4 ASSEMBLY MEMBER QUART: [interposing]
5 Thanks.

6 CHAIRPERSON GIBSON: so much for coming
7 today. Thank you for your testimony and all of the
8 work you're doing on gravity knives and this
9 legislation. Certainly looking forward to working
10 with you. I do know there's a timeframe that the
11 Governor has to consider the legislation before his
12 office, and you know, I will work with you in those
13 days, I mean, moving forward, and once the deadline
14 arrives, whatever happens obviously I want him to
15 support it as well, but you know, you have my
16 commitment to continue to work with you. I mean,
17 this is a topic very important and very personal to
18 me because I represent many of the clients that are
19 represented by Legal Aid and others that are
20 affected. You know, they get caught up in a system,
21 but the system needs to change, and so I recognize
22 it. So, even outside of this legislation I do think
23 that there's a broader conversation that we
24 definitely need to have with the NYPD, the District
25 Attorneys, and we also need to talk to retailers,

1 right? Like, this issue is not going to go away.
2 While we may not prosecute these cases, we're not
3 going to stop an industry that needs a folding knife
4 to work, right? So, we need to make sure that we're
5 giving them the options of being safe. We want to
6 make sure everyone's safe at the end of the day. So
7 I look forward to working with you with the
8 legislation as well as outside on the broader
9 conversation around gravity knives.
10

11 ASSEMBLY MEMBER QUART: Thank you so
12 much, Madam Chair.

13 CHAIRPERSON GIBSON: Thank you very much.
14 Thank you for coming today. Our next panel that
15 we're calling forward for today's hearing is Martin
16 LaFalce from the Legal Aid Society, Hara Robrish from
17 the Legal Aid Society, Kate Wagner-Goldstein, Legal
18 Action Center, Judy Whiting from Community Service
19 Society, and Estee Konor, Community Service Society
20 of New York. Okay, Martin's here. [off mic] Kate,
21 Judy and Hara. Thank you all for coming. Martin,
22 you want to begin?

23 MARTIN LAFALCE: Yes. Chair--
24
25

1
2 CHAIRPERSON GIBSON: [interposing] You're
3 the sole man at the table surrounded by phenomenal
4 women.

5 MARTIN LAFALCE: Chairwoman Gibson, thank
6 you so much for having us. My name is Martin
7 LaFalce. I'm a public defender with the Legal Aid
8 Society, and I think my testimony is better presented
9 as testimony on fairness within the criminal justice
10 system and equal enforcement of the law, not as
11 testimony regarding knives. My colleague, Hara
12 Robrish and I are public defenders, and we are
13 committed to seeing reform in this area of the
14 criminal justice system, because it is the most
15 discriminatory law in New York State. It's the most
16 discriminatory law in New York City, and despite
17 calls for reform, New York State's gravity knife law
18 continues to be enforced in a discriminatory way.
19 I've shown you this picture before, and I'd like to
20 show the audience this picture. On February 3rd,
21 2011, Elliot Parilla [sp?] was finishing a tiling job
22 in East Harlem, and when he finished the tiling job
23 in East Harlem, he had this Husky Home Depot utility
24 knife that he had been using. He took the knife
25 along with his other tools. He put it into his car,

1 and he was driving home from East Harlem to the
2 Bronx. He had a broken tail light, and police pulled
3 him over for the broken tail light. They searched
4 his car. They searched his person. There were tools
5 in his car including this Husky Home Depot knife that
6 he had purchased at Home Depot in the Bronx. A
7 police officers was able to flick this knife open
8 with one hand, and so Parilla was arrested and
9 charged with so-called gravity knife possession.
10 Normally, when someone is charged with possession of
11 a gravity knife they face a misdemeanor prosecution,
12 but because Elliot Parilla had a previous criminal
13 conviction, he faced what Assemblyman Quart referred
14 to as a felony "bump-up." Whenever someone has a
15 previous conviction no matter what it was for, no
16 matter how long ago that conviction was, if they're
17 found in possession of a knife that a police officer
18 can force open with one hand, they face felony
19 prosecution and seven years in prison. At trial it
20 was no defense for Elliot Parilla that he purchased
21 the knife at Home Depot. It was no defense that he
22 used it for work. It was no defense that he wasn't
23 threatening anyone with it. He had no defense. The
24 Police officers was able to flick it open. Cy
25

1 Vance's office charged Parilla with a felony.
2
3 Parilla was convicted at trial. He was sentenced to
4 two and a half to five years in state prison. His
5 knife, this Husky Home Depot knife, is sold at almost
6 every hardware store in New York City. It's sold
7 throughout the state. It's sold throughout the
8 country. I am not here as a knife rights advocate.
9 I am here in support of equal enforcement of the law.
10 We've told this story in the press. We've told this
11 story to the Assembly. We've told this story to the
12 Governor's office. We've told this story to the
13 Mayor. You directed NYPD to stay after their
14 testimony. Had they stayed, I would tell them right
15 now that there's nothing that prevents them from
16 going into any hardware store in New York City and
17 arresting those retailers who sell this knife if they
18 intend to enforce the law equally. Last year, when
19 Governor Cuomo vetoed the previous gravity knife
20 reform bill, he said the following of the state of
21 the law: Under current New York Law and practice,
22 knives that are classified as gravity knives are
23 designed, marketed, and sold as work tools for
24 construction workers and day laborers, the variety of
25 major retailers across the state. For any person who

1 goes into a store and purchases the product can be
2 subsequently arrested and prosecuted for mere
3 possession. This construct is absurd, and it is
4 absurd. It's a trap, and as Assemblyman Quart
5 explained, 86 percent of those people who are stopped
6 and prosecuted for so-called gravity knife possession
7 are black and Latino. At the height of "Stop and
8 Frisk" there were over 6,000 people who are arrested
9 every year for so-called gravity knife possession.
10 Now, post "Stop and Frisk" there are approximately
11 4,000 people who are arrested every year in New York
12 City for so-called gravity knife possession. Since
13 the Governor's veto December 31st, 2016, we have
14 found over 110 stores in Manhattan alone, we didn't
15 even look at the other boroughs, but Manhattan alone
16 where the knives are sold. We know that in 2006
17 Antoine Best [sp?], one of our clients who is an
18 employee of Starbucks had a folding knife that he
19 purchased online, he was prosecuted by the Manhattan
20 DAs Office. The first time his case was tried it was
21 a hung jury. Manhattan DAs Office tried him again.
22 They wanted to prove that he was in possession of an
23 illegal weapon, even though there was no allegation
24 that he intended to use it unlawfully or threatened
25

1 anyone with it. At second trial he was convicted.
2 He was sentenced to two and a half to five years in
3 prison. Today, 2017, Antoine Best's knife that he
4 was stopped for in 2006 received two-and-a-half to
5 five years in state prison can be found right now at
6 115 West 26th Street at Westfall Company. It's in
7 the glass case at the shelf. NYPD had stayed, I
8 would ask you to direct them to go to Westfall to
9 force the law equally. They haven't done that.
10 Richard Neil [sp?] was convicted of possessing a
11 folding knife in 2008. He was sentenced to three to
12 six years in state prison. There's no allegation that
13 he ever intended to use his knife unlawfully. He
14 never threatened anyone with a knife. It was a
15 folding knife that NYPD recovered after stopping him
16 and frisking him. That knife is sold online at
17 Lowes. I personally saw that knife and photographed
18 that knife at Lowes in Brooklyn in 2015, so seven
19 years after Richard Neil was convicted of felony
20 possession of a weapon and spent six years in prison.
21 NYPD did not utilize their awesome resources to go to
22 Brooklyn to go to the store, take the knife off the
23 shelf. This is a shameful law. It's a shameful
24 practice, and there's no other side to equal
25

1 enforcement of the law. We are thrilled that you are
2 shedding light on this practice. We are thrilled that
3 the Council is showing a concern about this unequal
4 enforcement of the law, and we applaud your efforts.
5 Turn it over to my colleagues.
6

7 CHAIRPERSON GIBSON: That was a great way
8 to start. Thank you. Alright, now you have to do
9 better.

10 : I don't know if I can do that, but
11 thank you so much for introducing this resolution.

12 CHAIRPERSON GIBSON: Is your microphone
13 on? Okay, you sound really low. Yeah make sure the
14 red button.

15 HARA ROBRISH: I'm sorry.

16 CHAIRPERSON GIBSON: Oh, okay, there you
17 go.

18 HARA ROBRISH: Thank you so much for
19 introducing this legislation. I represented Mustafa
20 Muhammad [sp?] when he was arrested for possessing a
21 gravity knife and charged with a felony. Because
22 Mustafa had a prior felony record as Marty discussed,
23 his case was bumped up to a felony and he was facing
24 seven years in prison. Mustafa Muhammad was arrested
25 across the street from his construction site at Delco

1 Electric while he was on a short break. When he was
2 arrested he was carrying an ordinary utility knife, a
3 knife similar to the knife that we passed out, a
4 knife that's considered a necessary work tool in the
5 construction trade. Mustafa got his job at Delco
6 through a parole program called Center for Employment
7 Opportunity, or CEO. It was this program that helped
8 him get a job in construction. At the end of his job
9 training he was given a stipend and instructed to go
10 to a hardware store in the Bronx to purchase
11 construction tools. It was at this hardware store in
12 the Bronx that he purchased the list of construction
13 tools as well as utility knife. On the day of his
14 arrest, Mustafa was carrying this utility knife along
15 with other tools. When Mustafa was arrested, his
16 utility-- I'm sorry. When he was arrested his
17 foreman came rushing over to tell the police that
18 Mustafa worked for him, and that he used the knife as
19 part of his job, but the police did not care. They
20 arrested him anyway. They also did not care that he
21 was arrested across the street from his construction
22 site or that he had purchased the knife in New York
23 City in the Bronx. As a result of this gravity knife
24 arrest, Mustafa spent over a month in jail on a
25

1 parole violation. It is usually for people in
2 construction to carry their tools to and from a
3 construction site because the sites are unsecure. If
4 the tools are left lying around they could go missing
5 or construction workers-- because construction
6 workers do not have desks or offices at the site to
7 lock up their tools. Mustafa Muhammad was lucky
8 because after a lot of effort and investigation I was
9 able to convince the District Attorney not to indict
10 him for a felony and to dismiss his case. However,
11 most people arrested in New York County for a gravity
12 knife that have a prior felony record are not so
13 lucky. Mustafa Muhammad never knew he was carrying
14 anything that could be considered an illegal weapon.
15 Mustafa Muhammad like thousands of other people in
16 New York City was arrested for purchasing a gravity
17 knife in a hardware store, a knife that had no
18 warning, and he no reason to believe it was unlawful.
19 NYPD and Cy Vance have opposed gravity knife reform
20 legislation repeatedly citing public safety concerns
21 and claiming that gravity knives are uniquely
22 dangerous. So after this bill was vetoed by the
23 Governor last year, and the main concern as I
24 discussed was public safety, we did an internal
25

1 review of our data, and we found that these claims
2 were unfounded and unsupported by the data. We
3 reviewed every violent felony complaint from July
4 1st, 2016 through December 1st, 2016 where a weapon
5 was recovered. This was over 1,800 complaints. Marty
6 and I reviewed several hundred of them ourselves, and
7 then with our colleagues. Together we looked at over
8 1,800 complaints, and from those complaints there
9 were over 2,000 weapons recovered. We logged each
10 and every weapon and found that gravity knives made
11 up less than two percent of the weapons recovered in
12 violent felonies and that they were used in a violent
13 or threatening way in less than one percent of the
14 cases. Belts, canes, crutches, bats, glass bottles,
15 scissors, and hammers were all used more often in the
16 commission of violent felonies than so-called gravity
17 knives, and all of those items are lawful to possess.
18 So, one of the issues that we have is NYPD continues
19 to claim these public safety concerns. However, this
20 law does not prevent the NYPD from arresting anyone
21 who is committing a crime, anyone who is threatening
22 any person with a knife or using a knife unlawfully
23 in any way. They can still be arrested under the law
24 for that. We're talking about mere possession. Our
25

1 clients have possessed these knives worked as
2 construction workers, maintenance workers,
3 electricians, chefs, movers, stagehands, stockroom
4 workers, as well as in many other blue collar jobs.
5 The collateral consequences even for a person that is
6 arrested for the first time is severe. Our clients
7 spend a night in jail before they see a judge. They
8 miss days of work to come to court appearances. Many
9 lose their jobs just as a result of the arrest, even
10 when their boss knows that they're using a knife as
11 part of their job. These individuals, as I stated,
12 are usually blue collar workers and missing even a
13 day of work jeopardizes their job, and they're also--
14 most of them are only paid for the days that they
15 work. So, this can become a financial burden if they
16 have to appear on multiple court appearances to
17 resolve the case. In addition, in order for them not
18 to get a misdemeanor, the cases are resolved many
19 times with a fine or community service, and that's
20 additional days of work that these individuals have
21 to miss and more money that they need to spend in
22 another financial hardship for hardworking New
23 Yorkers. So, it's for all of these reasons that we
24 want to thank you so much for introducing this
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resolution that we ask Council Members to vote yes on this resolution, and that we ask the Governor of the State of New York to sign this bill into law.

CHAIRPERSON GIBSON: Okay, great. You did better than Martin. [inaudible] alright. Now it's your turn, you have to do better. I love it. We get better and better. Thank you. Testimonies are amazing. Thank you so much. I really appreciate your passion, and I had a chance to meet with both of you, and I know that this is very, very important to you. So I appreciate it, and thank you for highlighting the stories. I mean, it's great that you're here, but when you hear the names of individuals that are coming from our communities that are victims in this process, it just makes it even more real for all of us. So, I thank you for sharing a lot of those stories. It's really important for the broader public to know, so thank you so much. Your turn.

KATE WAGNER-GOLDSTEIN: Hello. I'm here to address Introduction Number 1636, the bill to mandate the Mayor's Office of Criminal Justice to address erroneous errors, or erroneous criminal records. Thank you. So, my name is Kate Wagner-

1 Goldstein. I'm an attorney at the Legal Action
2 Center, a public interest law and policy organization
3 specializing in issues regarding the criminal justice
4 system, alcohol and drug addiction, and HIV or AIDS.
5 Thank you very much for the opportunity to address
6 these two important bills today. I plan to also
7 address the bill to address warrants. I'm not sure
8 if I should do this now. Should I address both of
9 them at the same time? Thank you. Okay.

11 CHAIRPERSON GIBSON: You can do it all.

12 KATE WAGNER-GOLDSTEIN: Great, thank you.
13 So, to start with the bill addressing erroneous
14 criminal records, this is a huge problem in New York
15 City as you are well aware. Hundreds of thousands of
16 New York City residents are likely to have a criminal
17 record with errors. These errors can derail people's
18 lives, preventing them from getting jobs, licenses,
19 housing, and sometimes even dealing with more
20 personal matters, like being able to formally adopt a
21 grandchild or other relative. Errors are currently
22 incredibly time consuming to fix, requiring traveling
23 in person to try to obtain documents, often going
24 from one office to another office to another office.
25 When the City Council held a hearing on the problem

1 of rap sheet errors last year, one of our clients
2 testified about his experience starting at the court
3 clerk's office being sent to the DA's office, then
4 being sent to the police precinct, and finally to One
5 Police Plaza, and there still no one could find any
6 record of the cases he was there to address or
7 provide any assistance. That experience is common.
8 The current system for correcting errors simply does
9 not work. Even when advocates like us get involved,
10 we run into some of the same road blocks and the
11 process takes far too much time. We need an office to
12 coordinate getting responses to these errors from the
13 various agencies involved and helping this system
14 both for advocates like us as well as for individuals
15 who don't necessarily find the offices that can
16 provide additional assistance and need to correct
17 these errors on their own. The Mayor's Office of
18 Criminal Justice could play this valuable
19 coordinating role. They have experience taking on
20 this type of role with a similar range of agencies.
21 For example, as an integral part of the Justice
22 Reboot Initiative recently to modernize the criminal
23 justice system. MOCJ can work with each agency to
24 ensure processes are in place to provide the
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1 documents that are required to correct the various
2 different types of errors. The process should
3 operate electronically so people do not need to
4 appear in person in each office to obtain the
5 required documents, and there should be other steps
6 taken to streamline these processes. We note that
7 MOCJ's role coordinating these efforts would not
8 supplant the work of legal service providers.
9 Providers still need additional resources to help
10 individuals, in the first place to identify errors on
11 their rap sheets, and then to help start the process
12 of error correction, but our work would be much more
13 efficient and have much greater impact if the error
14 correction process could be streamlined by a
15 centralized office. We also applaud the bill's
16 requirement that MOCJ ensure that the public is aware
17 of the error correction system, and as part of this
18 publicity effort, we ask that the bill also require
19 that MOCJ publicize New York State's brand new law
20 that allows people to seal certain criminal
21 convictions. That law went into effect last week,
22 and there is not enough public awareness of it. So
23 we would ask that they try to increase awareness of
24 that at the same time. As part of this bill, the New
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1
2 York Police Department should also be required to
3 create an easily accessible and publicized process to
4 provide the documents needed to correct certain
5 errors. They alone have the documents necessary for
6 certain types of errors, and it can be very difficult
7 to obtain it currently-- obtain those kinds of
8 documents currently. In general, all agencies should
9 be producing the documents needed for error
10 correction within two days. Currently, it can take
11 weeks to get the documents corrected. New York
12 City's Fair Chance Act requires employers to hold
13 open jobs for only three days while applicants
14 attempt to address concerns regarding their criminal
15 background. While employers can, of course, hold them
16 open beyond that, many employers do not, and so
17 individuals need to be able to correct these errors
18 quickly enough that the job will still be available
19 once they do. The Legal Action Center also strongly
20 supports the bill that requires the Mayor's Office of
21 Criminal Justice to address outstanding warrants.
22 Inaccurate warrant information and open warrants are
23 a huge problem in New York City. It is essential that
24 the Police Department's records of outstanding
25 warrants are kept up-to-date and that New Yorkers

1
2 have more opportunity to vacate their warrants. We
3 thank you again for your commitment to both of these
4 issues, and we would welcome the opportunity to
5 continue to work with you on developing these bills
6 going forward. Thank you so much.

7 CHAIRPERSON GIBSON: Thank you very much,
8 very much. We really appreciate it. We're going to
9 get those bills passed.

10 KATE WAGNER-GOLDSTEIN: Thank you.

11 ESTEE KONOR: Going out of order here a
12 little bit. [off mic] Okay. Good afternoon. Thank
13 you so much to Chair Gibson and to the committee for
14 giving me the opportunity to testify today in support
15 of both Intro Number 1636 and Intro. 6381 regarding
16 warrants. I'll first speak about Intro. 1636 which
17 would amend the Administrative Code of New York City
18 to require the Mayor's Office of Criminal Justice to
19 address erroneous criminal records. My name is Estee
20 Konor, and I'm an attorney at the Community Service
21 Society, or CSS. CSS is a nonprofit organization
22 with a 175-year history of excellence in addressing
23 the root causes of economic disparity in New York
24 through research, advocacy, litigation, and
25 innovative program models that benefit all New

1
2 Yorkers. Several CSS programs provide services to
3 the most vulnerable New Yorkers including justice-
4 involved individuals. Because having a conviction
5 history substantially undermines an individuals'
6 chances of full participation in the community, CSS's
7 Legal Department focuses exclusively on advocacy,
8 policy and litigation approaches to combatting
9 criminal records-based discrimination in employment,
10 licensing, housing, and civic engagement.

11 Additionally, CSS's Next Door Project helps more than
12 650 New Yorkers each year obtain, review, understand,
13 and correct mistakes in their New York State and FBI
14 rap sheets. CSS supports the Mayor's Office of
15 Criminal Justice taking steps to establish a simple,
16 accessible system that can be used by both advocates
17 and members of the public to correct criminal record
18 errors. Because there is currently no uniform or
19 standardized system for doing so in New York City,
20 advocates and members of the public must navigate a
21 labyrinth-like process that often requires
22 information to be gathered from various agencies,
23 departments, courts, and offices across the City.
24 Obtaining this information can be confusing, time
25 consuming, logistically difficult, if not downright

1 impossible. Sometimes information is not immediately
2 available, but must be requested and then later
3 retrieved in person at a particular office or court
4 building. One DA's office goes even further and will
5 not permit members of the public to request
6 information in person, and instead requires that
7 information be requested by mail. Many CSS clients
8 face difficulties when attempting to gather
9 information about their own criminal records so that
10 errors can be fixed. For example, and in particular
11 in cases where official records show that an arrest
12 took place and no post-disposition outcome-- no
13 disposition has been posted for that arrest,
14 individuals can be required to go to multiple court
15 buildings or government agencies to gather
16 information required to show how the arrest was
17 terminated. Additionally, once an individual
18 actually locates the relevant files, clerks or other
19 court personnel sometimes provide inaccurate
20 information. Further, individuals who are not
21 provided a free copy of their certificates of
22 disposition can be financially burdened by the 10-
23 dollar per-document fee. The confusing and time
24 consuming nature of the process that New Yorkers must
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1 currently navigate operate as a barrier to getting
2 criminal record errors fixed. This barrier impedes
3 the ability of justice-involved New Yorkers and the
4 communities of color that are disproportionately
5 impacted by our city's policing to move forward after
6 contact with the justice system. We encourage the
7 Mayor's Office of Criminal Justice to engage with CSS
8 and other legal services providers and re-entry
9 advocates who help low-income New Yorkers to overcome
10 barriers to re-entry to establish a system that makes
11 it easier for members of the public and their
12 advocates to correct criminal record errors. CSS
13 also supports MOCJ coordinating efforts to ensure
14 that relevant City agencies are responsive to
15 requests from members of the public and advocates to
16 correct mistakes on criminal records. CSS offers the
17 following suggestions: First, the Mayor's Office of
18 Criminal Justice should carefully consider the speed
19 with which city agencies should be required to
20 provide information to members of the public or
21 advocates regarding an individuals' criminal record
22 so that production of that information takes place
23 within a meaningful timeframe. In doing so, the
24 Mayor's Office of Criminal Justice should account for
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1 the frequently tight timeframe in which individuals
2 must provide employers with information to correct
3 inaccuracies in criminal records and require that
4 agencies under the office's purview provide
5 information within timeframes that would allow
6 individuals to productively comply with those
7 requirements. As CSS has already noted, members of
8 the public and advocates must currently navigate a
9 confusing and long process to gather information
10 regarding an individuals' criminal record and correct
11 criminal record errors. The fact that getting this
12 information and correcting errors takes such a long
13 time seriously undermines if not negates the
14 important employment protections established by the
15 Fair Chance Act which was passed with strong City
16 Council support and signed into law in 2015. The Act
17 requires that no inquiries about a conviction history
18 can be made until a conditional job offer is extended
19 to an individual. After a conditional job offer is
20 made, questions can be asked and a background check
21 and be run. An employer who then intends to rescind
22 the job offer based on conviction history information
23 must provide the applicant with a copy of any
24 background check used and indicate which convictions
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1 or circumstances the employer considers to be
2 problematic. The employer is then required to hold
3 the position open for a minimum of three business
4 days. During these three business days, the
5 applicant is given the opportunity to correct any
6 mistake in information the employer has received
7 about the applicant's criminal record or to provide
8 the employer with evidence of rehabilitation or both.
9 An applicant will generally be seeing the background
10 check used by the employer for the first time at this
11 juncture, and it may well contain errors. However,
12 because it is so difficult to get original source
13 public record information needed to correct those
14 errors, it is often impossible for job applicants to
15 provide potential employers with that information
16 within three business days. This means that in order
17 for the measures contemplated in this bill to
18 actually help New Yorkers who are trying to utilize
19 the important protection provided by the Fair Chance
20 Act, city agencies must be required to provide
21 information to members of the public and their
22 advocates very quickly. Otherwise, for individuals
23 with errors in their background checks, the Fair
24 Chance Act may fail of its purpose. The second
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1 suggestion that CSS offers is regarding voided
2 arrests and declined prosecutions. CSS suggests that
3 the Mayor's Office of Criminal Justice require the
4 NYPD and DA offices in the five boroughs to respond
5 to request for information by immediately providing
6 an on-the-spot letter stating that the arrest has
7 been voided or prosecution has been declined as
8 appropriate. This letter could then be presented to
9 potential employers to clarify the status of the
10 arrest at issue or used to substantiate and correct
11 criminal record error, or both. CSS's third
12 suggestion is that it would be helpful for the
13 Mayor's Office of Criminal Justice to coordinate
14 efforts across the five boroughs to ensure local
15 courts uniform processing of applications for
16 certificate of relief from disabilities. Currently,
17 courts in each borough use a different procedure.
18 For individuals seeking certificates for more than
19 one court and their advocates, the variety of
20 procedures makes for confusion and wasted effort.
21 Finally CSS also notes that it supports the bill's
22 directive that the Mayor's Office of Criminal Justice
23 take all measures necessary to ensure that the public
24 is aware of the system that the office will establish
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1 for correcting criminal record errors. In order to
2 ensure that the programs contemplated in this bill
3 are effective, it will be important for members of
4 the public to easily obtain information about their
5 own criminal record, understand that information,
6 understand that they have the ability to correct
7 criminal record errors, and understand the rights and
8 protections that are available to them under New York
9 City law. in support of this goal, CSS offers the
10 following suggestions: Number one: We encourage the
11 Mayor's Office of Criminal Justice to engage with CSS
12 and other legal services providers and re-entry
13 advocates to provide public education regarding
14 criminal records and legal services regarding
15 criminal record error. Number two: CSS suggests
16 that the Mayor's Office of Criminal Justice take all
17 steps necessary to make the public aware of sealing
18 [sic] opportunities currently available in New York.
19 Currently, or including under Criminal Procedure Law
20 160.59, which went into effect earlier this month, as
21 well as the under-utilized Drug Law Reform Act
22 Sealing pursuant to Criminal Procedure Law 160.58.
23 and as a final suggestion regarding bill 1636, CSS
24 suggests that the Mayor's Office of Criminal Justice
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1 engage with CSS and other legal services providers
2 and re-entry advocates to provide public education
3 regarding sealing opportunities and consider
4 allocating funds to these providers and advocates so
5 they may assist as many New Yorkers as need their
6 services. So, now I'd like to offer CSS's testimony
7 regarding bill 6381 on warrants. The previously
8 considered bill T2017-6381 would amend the
9 Administrative Code of the City of New York
10 regarding-- to address outstanding criminal warrants.
11 CSS supports the Mayor's Office of Criminal Justice
12 establishing a means for members of the public to
13 rectify inaccurate warrants. CSS also supports the
14 bill's directive that the office ensure that records
15 of outstanding warrants maintained by the NYPD are
16 consistent with records maintained by the Office of
17 Court Administration. Right now it is very difficult
18 for members of the public and advocates to ascertain
19 whether an individual has any open warrants or
20 whether a known warrant is active, because warrant
21 information is contained in various databases
22 maintained by the NYPD and OCA, and these databases
23 are often inconsistent. Ensuring that the NYPD
24 warrant databases are consistent with OCA databases
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1 will help eliminate uncertainty and confusion.
2 Inconsistent databases also have other directly
3 harmful effects. The unfortunate truth is that
4 members of the public often do not learn that they
5 have a warrant until it creates an immediate problem.
6 For example, an individual may be stopped by the
7 police either due to the alleged open warrant or due
8 to new potential criminal conduct. The alleged open
9 warrant can be and is frequently used as a reason to
10 involuntarily return the individual to court to
11 answer the warrant or to detain an individual and
12 process their arrest through central booking rather
13 than issuing a summons or a desk appearance ticket.
14 Alleged open warrants are also often cited by DAs at
15 arraignment when making recommendations that they'll
16 be set. An individual with warrants in their past,
17 whether open or otherwise is cited as a flight risk,
18 someone who should be detained pending prosecution.
19 Alternatively, an individual may not learn about the
20 existence of a warrant until it comes up on a
21 background check run by an employer, which then could
22 create an almost certain barrier to employment unless
23 that issue is immediately rectified. In some
24 circumstances, NYPD databases apparently list
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1 warrants as open that were previously quashed by the
2 courts and the reverse is also true. CSS works with
3 hundreds of individuals each year to obtain, review
4 and correct mistakes in their official criminal
5 record rap sheet. When we see entries for warrants,
6 we check with courts to determine whether or not they
7 are active, and in many cases they are not. In some
8 cases, they are still listed as active, but should
9 not be. Inaccurate records from both the courts and
10 NYPD are to blame. It is harrowing and difficult for
11 an individual who is not working with CSS or another
12 legal services provider to determine the status of
13 warrants on their own or to clear improper records.
14 In some cases, clients report that before they
15 engaged our services they had difficulty explaining
16 to either the NYPD or the courts as appropriate that
17 a warrant had previously been quashed, and the result
18 was that they were then picked up for no reason,
19 detained and processed through central booking when
20 they should have instead been issued a summons or a
21 desk appearance ticket, or they had bail set, because
22 improper entries were used to paint them as a flight
23 risk. New York City needs to simplify the process
24 that members of the public and advocates use to
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1 determine whether an individual has any open warrants
2 and to rectify inaccurate warrants. CSS suggests
3 that the Mayor's Office of Criminal Justice engage
4 with CSS and other legal services providers to
5 establish a means for rectifying inaccurate warrants
6 that make sense for low-income and vulnerable New
7 Yorkers. CSS also supports the bill's directive that
8 the Mayor's Office of Criminal Justice take all steps
9 necessary to facilitate reducing the number of
10 outstanding warrants. Regarding the organization and
11 implementation of events for the purpose of vacating
12 criminal warrants, CSS offers the following
13 suggestion to the Council and the Mayor's Office of
14 Criminal Justice. To the greatest extent possible,
15 the Mayor's Office of Criminal Justice should take
16 all steps necessary to administratively vacate
17 outstanding summons warrants that are at least five
18 years old and host warrant vacating events to clear
19 more recent entries. CSS lauds the four District
20 Attorneys who previously vacated 10-year-old and more
21 summons warrants and suggests that this effort be
22 extended to warrants that are five years old and
23 more. Doing so would efficiently clear the books of
24 sealed warrants without the need for individual
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2 appearance, which some people find difficult to
3 achieve due to childcare, work or other obligations,
4 or perhaps due to an unfounded fear of immigration or
5 other consequences. That means that court officer,
6 public defender and DA involvement could thus be
7 reserved for events hosted for clearing warrants that
8 are less than five years old. And as a final note,
9 CSS supports the bill's directive that the Mayor's
10 Office of Criminal Justice will prepare annual
11 reports compiling data on outstanding warrants in New
12 York City and submit those reports to the Mayor and
13 the Council and post reports on the office's website.
14 The annual reports prepared by the Mayor's Office of
15 Criminal Justice will be useful because they will
16 illustrate law enforcement trends related to warrants
17 and will indicate which parts of the City have an
18 inordinate need for warrant-related relief. Thank
19 you.

20 CHAIRPERSON GIBSON: Thank you very much.

21 JUDY WHITING: Hi, I'm Judy Whiting also
22 with the Community Service Society.

23 CHAIRPERSON GIBSON: Okay.
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2 JUDY WHITING: I'm going to switch this
3 up a little bit. I'm not going to talk about those
4 two bills.

5 CHAIRPERSON GIBSON: Okay.

6 JUDY WHITING: Instead, I'm going to talk
7 about Intro. 1664, that's the subject of the written
8 testimony that's been handed up, and then briefly I'm
9 going to touch on Intro. 1712.

10 CHAIRPERSON GIBSON: Okay.

11 JUDY WHITING: So, CSS strongly supports
12 Intro. 1664. This bill in the hearing could not come
13 at a better time. The issues this bill covers are
14 timely and important and effect all of us as New
15 Yorkers. New York City Transit Authority is the
16 largest subway system in the world, and as obvious to
17 anyone who rides it, the busiest in the Western
18 Hemisphere. And New York City itself covers more
19 than 300 miles. Each week day, about six million
20 people ride the subway, each week day, to work, to
21 medical appointments, to go to school, to pick up
22 kids from daycare. But one in four New Yorkers
23 report that they are struggling to afford the fare.
24 This is an issue demonstrated by our polling data and
25 is highlighted by the work of the swipe it forward

1 campaign. To address the problem, CSS and the Riders
2 Alliance introduced the Fair Fares Campaign to get
3 half-priced metro cards for low-income New Yorkers.
4 We have strong City Council support and editorial
5 support and public support for the campaign, and we
6 continue to wage the fight. As we drew attention in
7 the campaign to the underlying unaffordability
8 crisis, many New Yorkers and public defenders pointed
9 to even more serious consequences, unaffordable fares
10 combined with aggressive fare-beating enforcement, a
11 hallmark of broken windows policing, was annually
12 dragging more than 26,000 people, most of whom were
13 poor and most of whom were black and Latino, through
14 the criminal justice system. As already highlighted,
15 even a simple arrest, no matter whether it results in
16 prosecution or not, can have lifelong consequences,
17 including lost work, the possibility of a criminal
18 record that limits access to jobs, housing, and
19 higher education, and could put an immigrant at risk
20 of deportation. These concerns prompted Community
21 Service Society with Brooklyn fare evasion arrest
22 data provided to us by the Legal Aid Society and
23 Brooklyn Defender Services to shed light on how fare
24 evasion policing was affecting our communities. The
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1 Brooklyn data painted a stark picture of inequality.
2 As graphically shown in our report, and I handed up a
3 couple of copies, "The Crime of Being Short \$2.75."
4 This report was issued today, and we thank you. I've
5 handed it up. I've got more copies if anyone wants
6 it. It's also available for free download on our
7 website. Our troubling findings underline the need
8 to have publicly available data on fare evasion
9 arrests and civil summonses gathered and published on
10 a timely regular basis. Bill Intro. 1664 would do
11 just that. Having access to the data that the bill
12 requires to be provided and published would allow us
13 and others to see whether the patterns we observe in
14 Brooklyn are playing out across the City. It would
15 also allow us and others to assess the impact of
16 District Attorney's announced changes in prosecution
17 of fare evasion arrests. By prosecuting fare evasion
18 arrests as it does now, New York City is essentially
19 criminalizing poverty with racially discriminatory
20 effects. We should instead work to make public
21 transit affordable for all, including those living in
22 poverty. CSS likewise supports Intro. 1712,
23 introduced by Council Member Lancman, to require
24 collection of publication of detailed information
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1 about arrests and their disposition of New York City.
2 CSS's Legal Department, as previously mentioned,
3 exclusively represents individuals' conviction
4 histories and re-entry matters including employment,
5 licensing, housing cases, and our Next Door Project
6 helps New Yorkers attain, correct mistakes and
7 understand their criminal record rap sheets. Our
8 client's experiences shape our policy and legislative
9 advocacy in this area, including our work as legal
10 advocate on the New York City Fair Chance Act and our
11 current work in mobilizing a statewide campaign for
12 legislation that would expunge stale criminal
13 records. In our policy and legal work, we would be
14 immensely helped by detailed data that qualifies and
15 quantifies the types and dispositions of arrests.
16 The bill would go a very long way towards making
17 criminal enforcement trend observable at known.
18 Fortified by the data the bill requires to be
19 collected and published, we would thus be able to
20 learn how each actor in the criminal enforcement
21 system from police to prosecutors to courts
22 approaches their mission and whether stated policies
23 translate into concrete changes. I have two issues
24 to note about bill 1712. I do not believe that the
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1 bill currently includes in its definition of-- in its
2 intro definition and doesn't currently capture
3 arrests that are voided by the NYPD. I would like to
4 ask the bill be amended to include that information
5 as data that's captured under the bill. And then
6 lastly, I think on the very last page in the last
7 paragraph or so it refers to individuals with
8 conviction histories as "inmates." I would ask that
9 that language be changed. So, to clarify, voided
10 arrests should be included in the definition of
11 disposition at the beginning of the bill. Thank you
12 very much.

14 CHAIRPERSON GIBSON: Thank you very much
15 for this incredible panel. Thank you for your
16 testimony, for your suggestions on how we can enhance
17 the legislation, but generally your support and your
18 work. I won't trouble you with questions because
19 your testimonies were very detailed and gave a lot of
20 information for the Council to review, and I do have
21 two panels after you. So, I want to thank you again
22 for your time, and looking forward to our work
23 together. Thank you once again.

24 UNIDENTIFIED: Thank you.

25 UNIDENTIFIED: Thank you.

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2 CHAIRPERSON GIBSON: Okay, the next panel
3 we are calling to testify is Wesley Caines from the
4 Bronx Defenders, Kate Rubin from Youth Represent,
5 Christine Bella and Marlene Bodden from Legal Aid
6 Society, and Jared Chausow from Brooklyn Defender
7 Services. Okay, so Wesley you're here. Jared is
8 here. Do I have Christine and Marlene?

9 UNIDENTIFIED: Yes.

10 CHAIRPERSON GIBSON: Okay. And Kate?
11 Okay. Okay, thank you all. We can begin here with
12 Kate. Those of you that have provided testimony, we
13 appreciate it. The testimony is here for the record,
14 so if you don't want to you don't have to read the
15 entire testimony. You can always highlight some of
16 the points if you choose, just as an option. Don't
17 feel obligated.

18 KATE RUBIN: That was already my plan.

19 CHAIRPERSON GIBSON: Thank you so much.
20 Welcome.

21 KATE RUBIN: So, yeah, I'm going to try
22 to keep it brief, because there's been a lot of great
23 testimony already. I'm Kate Rubin, Director of
24 Policy at Youth Represent. We provide holistic legal
25 representation to youth 24 and under who have been in

1 the criminal justice system, and thank you for the
2 chance to testify. I really echo what a lot of my
3 colleagues from the re-entry legal services world
4 say. So, on Intro 1636, so just to echo them we
5 support the bill. We think there's an important role
6 for MOCJ to play, facilitating, you know, rap sheet,
7 error correction. Practically speaking, a lot of the
8 errors that are both most difficult to fix and also
9 have the most severe consequences for our young
10 people originate from NYPD, what we call "hanging
11 arrests and voided arrests." So, we respectfully
12 urge the Council to go further than what the current
13 bill language includes and to specifically direct
14 NYPD to address hanging arrests and voided arrests,
15 and to basically improve their systems for creating
16 and documentation and transmitting that documentation
17 to people who need it. I go into a little bit more
18 detail about those specifics in the written
19 testimony, but simply put, prospective employers and
20 landlords won't wait weeks for a person to track down
21 a lieutenant at NYPD who is willing to fax over the
22 right paperwork to prove that what looks like an open
23 robbery is actually a sealed case and dismissed case.
24 We also echo some of the amendments to 1636 that
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1
2 others have suggested including creating a
3 streamlined process for applying to certificates for
4 relief from disabilities, adding to the public
5 education component, raising awareness about sealing
6 opportunities. And also want to note as others have
7 that legal services providers are still going to be
8 needed to do this work. So, to keep that in mind as
9 sort of budget allocations are made. We also support
10 Intro 1664 and 1712 and Intro 1569. I just-- for
11 1664, the Lancman bill on transit arrests, I know
12 there was some conversation between the councilman
13 and the NYPD about the bill and particularly
14 subsections D and E which would public-specific
15 information about DATs and the reasoning for making a
16 full arrest in lieu of summons for fare evasion. That
17 information in the absence of legislation is never
18 publicly available and we really think it's essential
19 to oversight of the transit recidivist policy that
20 was outlined by the NYPD today, and to understanding
21 how officers use the tremendous discretion that they
22 have to enforce fare evasion with either criminal or
23 civil penalties. I think it's worth noting that, you
24 know, the committee is considering a bill today about
25 errors in criminal records and errors in thee

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2 databases. Because of those errors I think people are
3 frequently marked as transit recidivist when they're
4 not and we need that information. I would just close
5 on that point by saying that the NYPD has incredibly
6 sophisticated systems for collecting data and using
7 it for police practices. It's my understanding that
8 they're a worldwide leader in that area and that I
9 have to believe that they have the capacity to
10 reasonably easily comply with the mandates that are
11 in 1664. So, thank you for the opportunity to
12 testify.

13 CHAIRPERSON GIBSON: Thank you.

14 JARED CHAUSOW: Thank you, Chair Gibson.
15 My name is Jared Chausow. I'm the Advocacy
16 Specialist at Brooklyn Defender Services. I want to
17 thank you for inviting us to testify today. So, in
18 short, because I also will summarize, BDS supports
19 Intro. 1636 relating to rap sheet errors. Intro 1664
20 relating to reporting fare evasion arrests and civil
21 summonses; Intro 1712 relating to the reporting of
22 criminal case dispositions; Intro-- excuse me, T2017-
23 6381 relating to criminal warrant errors, and
24 Resolution 1660, that's yours Chair Gibson, relating
25 to gravity knife reform. We also, in addition, offer

1 some certain recommendations to strengthen these
2 bills. I won't go into all of them today. They are
3 in our written testimony. We do take no position on
4 the remaining items, but we do offer some comments on
5 the resolution regarding concealed carry reciprocity
6 in the written testimony. So, briefly, in 2015,
7 BDS's Re-entry Unit launched a rap sheet clean-up
8 project, and when I say our Re-entry Unit, I should
9 say it was Mr. Wesley Caines who is to my right when
10 he was at Brooklyn Defender Services created that
11 project which unearthed what we now recognize as
12 decades of neglect of rap sheet accuracy that is well
13 known to certain actors in the criminal/legal system.
14 So, one significant factor in these errors that we
15 need to talk about, we need to recognize today, is
16 the immense size and scope of our criminal/legal
17 system and of the record-keeping required. So,
18 according to the Legal Action Center report, you'll
19 hear more about it later, there's something like
20 seven million people across the state with rap
21 sheets. Quite a few have errors, estimated around 30
22 percent, and until very recently there are, as we
23 heard it earlier, one and a half million open
24 warrants in this city with about half of those
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1 remaining. So, simply as a clerical system, this is
2 a massive undertaking, especially given the high
3 stakes of criminal records. We're talking about
4 lifelong job and housing discrimination, deportation,
5 false arrest, imprisonment, and many other
6 consequences. So, the agencies responsible for these
7 records have an enormous burden to bear, and frankly
8 have grossly inadequate systems and no real time
9 quality control measures in place, and that's
10 disappointing. So, again we support this bill. I
11 would echo the comments of my colleague Ms. Rubin
12 regarding the additional mandate on NYPD. There are
13 certain elements of these errors that stem from the
14 NYPD, and we know that they are the best position to
15 be able to fix them. A couple specific
16 recommendations that I think are important. Every
17 person in the City or across the state should have
18 free and easy access to their own criminal records
19 without having to receive any indigenous waiver or
20 any additional paperwork so they can check for errors
21 and advocate for themselves as needed. The city
22 agency that has these records other than law
23 enforcement should be able to provide them free of
24 charge, and that could circumvent the state's revenue
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1
2 generating scheme. The NYPD should be required to
3 include a sunset clause with any fingerprints it
4 sends to DCJS to prevent hanging and voided arrests
5 from appearing on rap sheets long-term. If the
6 arrest does not lead to a court case within a given
7 time period, that should be purged. And I also agree
8 with [inaudible] as MOCJ publicizes its role in
9 collecting rap sheets according to this legislation.
10 It should also publicize sealing opportunities.
11 Brooklyn Defender Services is currently promoting its
12 own assistance and sealing at our community office in
13 East New York. So, very briefly about gravity
14 knives, in our testimony we provide several
15 horrifying stories of BDS clients impacted by our
16 state's unjust gravity knife law, and I just want to
17 thank Council Member Gibson for pushing a resolution
18 supportive reform and to know that that bill is
19 awaiting action from Governor Cuomo as we speak. One
20 story in particular that struck me. At a rally
21 earlier this afternoon, our supervising immigration
22 attorney shared a story of a man who had lawful
23 status, was not undocumented, but was detained for
24 about nine months in ICE jail after his criminal case
25 stemming from a gravity knife arrest was resolved,

1 and ultimately we were able to get him free on bond
2 after a lot of litigating over what constitutes an
3 illegal weapon in New York State. But others might
4 not be so lucky, and ultimately this man was-- spent
5 nine months in jail, you know, with an uncertain
6 future, unable to care for his family because of a
7 utility knife that he used on a warehouse job. So, I
8 really appreciate this resolution, and I hope the
9 Governor is listening and does the right thing.
10 Lastly, on the concealed carry reciprocity bill, BDS
11 takes no formal position on this resolution, but as I
12 said earlier, we do offer some comments and context
13 on that written testimony that warrant review. In
14 particular we attached to our testimony an article
15 that appeared in the Village Voice last year
16 regarding some of the police practices that are
17 involved in gun regulations in New York City. Thank
18 you.

19
20 CHAIRPERSON GIBSON: Thank you very much.

21 WESLEY CAINES: Good afternoon,
22 Chairperson Gibson. Thank you for the opportunity to
23 appear before you today. My name is Wesley Caines
24 and I am the Re-entry and Community Outreach
25 Coordinator for the Bronx Defenders, part of the

1
2 Civil Action practice. We each year handle tens of
3 thousands of New Yorkers in both criminal matters and
4 the consequences deriving from those criminal
5 justice-involvements. I too will make my comments
6 abbreviated. I would like to say that the Bronx
7 Defenders are in support of Resolution 1664, 1660,
8 1569, 6381, but I would like to have a few comments,
9 a few moments to have some comments regarding Intro
10 1636 regarding the streamlining, empowering MOCJ to
11 streamline the system of criminal record correction,
12 that is both public and easily accessible to
13 individuals and their advocates. We find this
14 legislation to be timely. We also believe that it's a
15 great first start, but the goals of this legislation
16 we feel will not be served unless there's more
17 specific language placement in this legislation. For
18 this reason, the Bronx Defenders recommends that each
19 New York City resident who upon request received a
20 free criminal record each year in the same way that
21 credit reporting agencies are required to do. We
22 find it incredible that government agencies that
23 maintain criminal records that have such profound
24 impact on the lives of New Yorkers don't have a
25 mandate that the legislature mandates that credit

1 reporting agencies should fulfil, which is providing
2 the public access to the records maintained so that
3 the public could realize whether or not there are
4 errors and the direction as to how to correct those
5 errors. Had this policy been in place, the example
6 of one particular former client of mine possibly
7 could have been avoided. This particular client as a
8 teenager worked at a preschool, and as a teenager she
9 was not required to have a background check.
10

11 However, in her late teens she was detained by NYPD
12 with a male colleague, male companion, and after
13 several hours at the precinct her arrest was voided,
14 and she was advised to watch her company.

15 Unbeknownst to her, however, a criminal record had
16 been established for her in Albany through DCJS and
17 NYPD's relationship about processing fingerprints.

18 In her early 20's, Jessica, again, tried to work at
19 the same preschool, and because she was an adult a
20 background check was required. Upon the background
21 check's return it was revealed that she had an
22 erroneous, non-existent, open case. Her employer,
23 because of the prior relationship allowed her four
24 weeks with which to get documentation to prove that,
25 and I must advise and I must say that four weeks is

1 highly unusual, and the only reason why she received
2 four weeks was because of that prior relationship.
3 For two weeks my former client, Jessica, went from
4 courthouse to the precinct, to One Police Plaza to no
5 avail to get documentation indicating that she did
6 not have an open case. Ultimately, Jessica was
7 referred to me by a colleague, and I was able to,
8 working with the local District Attorney, get a
9 letter indicating that this was, in fact, a voided
10 arrest. Ultimately, Jessica was able to regain
11 employment at this childcare provider, but it
12 shouldn't take for someone like me in order for a
13 resident of New York City to access their records or
14 to prove errors in their criminal records. I think
15 at the bare minimum, having a yearly background check
16 of oneself for free is at the minimum can do to
17 ensure that the detrimental impact of justice
18 involvement doesn't follow people in their move
19 forward in life. The Brooklyn Def-- the Bronx
20 Defenders, sorry-- the Bronx Defenders also have five
21 recommendations that we feel in addition to free
22 yearly background check of criminal records for
23 residents. We believe that NYPD should direct DCJS
24 to purge any arrest information after 30 days if no
25

1 further information is provided by OCA indicating
2 that a prosecution has commenced. And Kate mentioned
3 and Jared mentioned as well that one of the big
4 issues, and NYPD is a big violator of this, one of
5 the big issues is getting documentation to prove
6 error. And this Council wisely two years ago passed
7 the Fair Chance Act, and I think as we reflect now on
8 Stop and Frisk and the impact of it on certain
9 communities, I think moving forward that we should
10 look to dismantle the impact of Stop and Frisk, and
11 this is another opportunity to do that. Government
12 agencies especially the ones under the purview of New
13 York City, NYPD, Department of Corrections should be
14 mandated to provide documentation on errors to
15 residents in this city within three days. It will
16 afford people an opportunity to gain employment and
17 to move on with their lives after justice
18 involvement, and you know, in the case of Jessica,
19 she did not have a criminal record. That's really
20 important to understand, that someone who did not-- a
21 young person who did not have a criminal record was
22 made to run around this city trying to get proof that
23 she did not have said record. Second, we ask that
24 this legislation be amended to mandate that the
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1 Department of Correction notify DCJS whenever someone
2 in its custody is not produced for court appearance.
3 If the person's failure to appear leads to issuance
4 and then a vacature [sic] of a bench warrant. This
5 also is important for clients. It makes-- earlier in
6 testimony the Chair mentioned that criminal records
7 reflects the character of individuals, and I think
8 that if we're going to hold up criminal records as
9 the basis for gauging someone's character, then it's
10 incumbent upon us to make sure that those records are
11 properly reflected and that they're correct, and I
12 think that this second mandate would do that. We
13 also ask that the legislation be amended so that NYPD
14 informs OCA whenever it voids an arrest. This,
15 because the first place that people usually turn when
16 they're told that they have an open case is to the
17 courts, and clerks are unaware if NYPD have voided an
18 arrest. They're unaware if the DAs have the client
19 to prosecute, and this can become time consuming for
20 them. Our previous testimony spoke about the
21 requirement to take time off from work, if they're
22 already working, and just not having time and money
23 to really run around to different government
24 agencies. The fourth mandate is that NYPD and DOC
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2 respond to the request, which I've mentioned, within
3 three days to be in alignment with Fair Chance Act.
4 And we also ask that MOCJ encourages the City's
5 District Attorneys to do likewise. Also we ask that
6 the legislation recommends the encouragement of
7 District Attorneys to share decline of prosecute
8 information with OCA as well. Part of the challenge
9 that I find in my day-to-day work is that DCJS is
10 fully aware of the errors in their database, but
11 they're of the position that they're not empowered to
12 make corrections, unless those agencies which
13 provided the information mandate that they do so.
14 And I think the city agencies that provide the
15 information to DCJS should be mandated to have a
16 fluid transfer of information to make sure that
17 records are accurately kept. Once again, I would
18 like to thank the Chair of this committee for
19 allowing me to represent the Bronx Defenders in
20 stating opposition on Intro. 1636. Thank you.

21 CHAIRPERSON GIBSON: Thank you very much.

22 MARLENE BODDEN: Hi, my name is Marlene
23 Bodden, and I'm an Attorney in the Special Litigation
24 Unit of the Legal Aid Society's Criminal Defense
25 Practice, and I'd like to introduce my colleague

1 Robert Newman who helped prepare the testimony that
2 we submitted. And also, after I speak, our colleague
3 in the Juvenile Rights Practice, Christine Bella,
4 will speak about the question of erroneous criminal
5 records and juveniles. So, earlier MOCJ completely
6 washed its hands of the problem of erroneous criminal
7 records. They blamed it on DCJS, and they, you know,
8 they just-- they had nothing to say about the Mayor
9 and the City's responsibility to order NYPD and DOC
10 to correct errors in criminal records and warrants,
11 and to correct them in a prompt manner as others have
12 described. Countless current, future and former
13 criminal defendants, detainees, and inmates in New
14 York City would be affected if MOCJ exercised this
15 authority over these agencies and ordered them to
16 update all erroneous criminal records promptly and to
17 include expired criminal warrants before people are
18 released from custody or even after they've been
19 released from custody and as everyone else described,
20 they're trying to find a job or trying to find
21 housing, etcetera. At present, there is no oversight
22 by the City over NYPD and DOC on how they handle
23 criminal records. And we know they generate millions
24 of criminal records all the time. So, I think that
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1 the most important part here is to get-- is for the
2 City Council to work with MOCJ and we also are
3 interested in working with MOCJ to get them to
4 provide oversight of NYPD and DOC and how they
5 generate records. I have a few examples of the
6 impact of erroneous warrants and criminal records.
7 One of them was a pretty well-known case that was in
8 the New York Times a few years ago, Nicholas Bollin
9 [sp?], and I use this example because it really is
10 quite similar to what our clients go through every
11 day all the time. Mr. Bollin was arrested. NYPD
12 arrested Mr. Bollin four times. I know I'm saying it
13 like a Kindergartener saying four, but four times,
14 because it just really upsets me here, on a vacated,
15 dismissed warrant that was erroneously issued in
16 2008. And I describe in the written testimony every
17 single arrest, and how he is-- the court gave him a
18 letter to say this warrant has been dismissed. He
19 showed it to NYPD and they refused to even look at
20 it. Now, Mr. Bollin's case is an extreme example of
21 a problem encountered frequently by our clients. At
22 least a dozen times a year on average, special
23 litigation unit is advised that a client appeared in
24 court after being held overnight in police detention
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1 only because NYPD claimed that our client was a
2 subject of a warrant, when in fact, either the
3 warrant had been vacated or the warrant was for
4 somebody else entirely. Legal Aid attorneys often
5 are able to secure a letter from a Criminal Court
6 judge as Mr. Bollin did stating that the client is
7 not the subject of a warrant, but even if the client
8 remembers to always carry this letter at all times,
9 the police are prone to ignore it. Now, NYPD's
10 retention of a warrant in its file as active after it
11 has been vacated by a court is inexcusable
12 negligence. Our colleagues have suggested practical
13 ways to address this issue involving better
14 coordination between the NYPD and the courts, and we
15 urge the Council and the Mayor's Office to end this
16 harmful practice. Now, there's also another awful
17 problem regarding warrants called the "Wrong Man
18 Warrants," particularly when identity theft is
19 involved, and when the underlying warrant was issued
20 on a summons and no photograph of the right defendant
21 is contained in NYPD files. But there are approaches
22 that could really help regarding technology, if the
23 City Council worked together with MOCJ and MOCJ
24 worked together with defenders and other
25

1 organizations. It is a gross injustice to hold a
2 person in custody on somebody else's warrant. Now, I
3 also have another few other examples involving the
4 Department of Corrections. One of our clients, CJ,
5 was jailed for a month at Rikers, losing wages that
6 time, of course, because the DOC inmate look-up
7 service listed an expired warrant. The bail bondsman
8 refused to set. His family offered to put up the
9 money to post bail the day after he was arrested.
10 Another client, ML, was denied eligibility for drug
11 rehabilitation program because the DOC inmate look-up
12 service listed an expired parole warrant. And the
13 Legal Aid Society Special Litigation Unit, we have
14 contacted DOC's General Counsel very-- numerous
15 times, and we have asked them to correct the
16 information on the DOC inmate look-up website, and
17 they have refused to do so. Instead, what they did
18 was, they said, "Well, we'll put up a disclaimer on
19 the website." They do have this little disclaimer
20 that's in tiny font, and bail bondsman, though, don't
21 bother to look at it. So, they'll assume that if
22 there's a warrant on the website, that it's an active
23 warrant when it actually isn't. We work closely with
24 organizations that post bail for our clients like the
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2 Bronx Freedom Funds, and they also have had problems
3 posting bail on our client's behalf because of the
4 DOC inmate look-up service listing expired parole
5 warrants. I will now defer to my colleague in the
6 Juvenile Rights practice, but I have-- we have
7 numerous examples in the testimony that we submitted
8 of how our clients actually face the problem.

9 CHRISTINE BELLA: Thank you, Marlene.

10 Good afternoon. So, I'm speaking to you from the
11 Juvenile Rights practice, and we represent youth
12 charged as juvenile delinquents in the New York City
13 Family Court. So, we're here today to speak
14 specifically with regard to Intro. 1636 as it relates
15 to the maintenance of erroneous criminal records, and
16 our written testimony includes line edits that we
17 would ask you to take a look at so that when the bill
18 is finalized it will include a definition of juvenile
19 records as distinct from criminal records. We think
20 this will serve an important purpose because many
21 youth who are ultimately prosecuted, arrested, and/or
22 prosecuted in the Family Courts do face collateral
23 consequences, negative consequences as a result of
24 erroneous criminal records being maintained by a
25 variety of city agencies as well as the Division of

1 Criminal Justice Services. So, the Family Court
2 itself does provide certain confidentiality
3 protections, sealing protections, and in certain
4 instances even expungement or destruction. However,
5 these laws do not go far enough to protect the
6 interest of those who have been prosecuted in the
7 Family Court, and we've undertaken advocacy with much
8 success with the myriad of agencies that you've heard
9 are responsible for maintaining these records and
10 affording confidentiality. However, problems do
11 persist. The most egregious problems that we see
12 occur when youth are initially charged as juvenile
13 offenders or arrested as so-called adults, but are in
14 fact never prosecuted, or if prosecuted are
15 prosecuted in the Family Court rather than Criminal
16 Court. So, the errors we find in these instances
17 originate from the following sources: One, the
18 failure of the NYPD to properly void its arrests, as
19 you've heard; the failure of the District Attorney's
20 office, or the corporation counsel's office to notify
21 DCJS of its decision to decline to prosecute; the
22 failure of the courts to notify DCJS of a decision to
23 remove a case from Criminal Court to Family Court;
24 the failure of the Family Court to notify DCJS of its
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1 disposition or DCJS failing to act on the information
2 provided by the various agencies. We've been
3 contacted by several people over the years seeking to
4 have erroneous juvenile records fixed, including
5 having those juvenile arrests removed from their DCJS
6 rap sheets and their FBI rap sheets. These clients
7 were not even aware as you've heard from other
8 panelists that the errors existed until they were
9 released during criminal background checks prepared
10 for employment purposes. So, I just want to briefly
11 touch on two examples that I think highlight the
12 problem here in New York City. I know you've heard
13 from a host of people with examples, but I would like
14 for these voices to be heard as well. At the age of
15 23, BK, a young man from Brooklyn, contacted our
16 office as he was denied employment with the New York
17 City Department of Education, because he reportedly
18 had an open juvenile arrest from seven years prior.
19 In fact, he had been acquitted of these charges after
20 trial many years earlier in the Family Court and
21 hadn't given it much thought. He and his mother
22 tried unsuccessfully for months to correct this
23 error. He was denied employment and his record was
24 not cleared until the Legal Aid Society became
25

1 involved and contacted the corporation counsel's
2 office, the District Attorney's Office, and DCJS
3 several times in order to resolve the matter.
4

5 Recently, we assisted a young woman in her early 20s
6 from Queens who learned about a reportedly open
7 juvenile arrest form 10 years earlier, which had been
8 prosecuted in Family Court. It appeared an error on
9 her FBI rap sheet when she was seeking employment.

10 Fearing that she would lose her job, she immediately
11 went to Family Court where the matter had been
12 handled some 10 years earlier. Thankfully, the clerk
13 in Family Court, although he could not help her,
14 referred her to our office and we were able to assist
15 her with clearing the FBI record. I will say, we
16 were able to ensure her employer that the matter
17 appeared erroneously. She did obtain the job.

18 However, we're still awaiting confirmation from both
19 DCJS and the FBI that this matter has been removed
20 from her rap sheet. So, that's just to say even with
21 the assistance, with legal assistance it's-- we're
22 months into this process and we still don't have an
23 assurance that this will not appear again. So, in
24 closing, we appreciate the Council's attention to
25 these matters. We support Intro 1636 and Intro 63281

1 with the amendments that we proposed in our written
2 testimony. We urge you to look at the line edits we
3 provided because both NYPD and DOC need oversight
4 from the Mayor's Office of Criminal Justice to
5 address criminal records and juvenile records and
6 outstanding criminal warrants. Moreover, MOCJ can
7 play a very useful role as set out in this proposed
8 legislation to ensure that city and state agencies
9 such as DCJS and OCA work together to see that
10 criminal records are both accurate and transparent.
11 We're eager to work with the Council and with the
12 Mayor's Office on how to implement the bill's goals
13 and to prevent further harm. Thank you.

14 CHAIRPERSON GIBSON: Thank you very much.
15 Once again, I appreciate your detailed testimony of
16 the legislation before us, but also the work you're
17 doing in really telling the tales of your clients.
18 Very interesting, very alarming, but certainly
19 continue to underscore the need for reform. So, we
20 appreciate all of you coming today and we have your
21 testimony for the record, and we certainly look
22 forward to our continued work together. Thank you so
23 much for coming today. Thank you.

24 UNIDENTIFIED: Thank you.
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CHAIRPERSON GIBSON: Okay, our next and final panel for this afternoon's hearing is Marielle Getz from the Grady Center and campaign to prevent gun violence, Kelly Grace Price from Jails Action Coalition, and Towake Komatsu [sp?]. If everyone is still here, please come forward. If there's anyone else who is to testify that has not signed up to do so, please do so now, or anyone's name who I did not call, please let us know. Thank you ladies. Who's Marielle and who's Kelly? Okay, Grace, okay.

MARIELLE GETZ: I'm Marielle.

CHAIRPERSON GIBSON: Okay, great. You can start. Thank you.

MARIELLE GETZ: Great. Thank you so much for having us. My name is Marielle Getz. I'm Counsel with the Brady Center and Campaign to Prevent Gun Violence, and we are here to testify in support of T2017-6705, the bill regarding warning language on firearm application permits, and I'll direct you to my detailed testimony. I'll keep it very short. You can see my detailed testimony for more information about Brady and what we do as an organization to fight this horrible epidemic of gun violence in our country, and I'll go straight to our support of this

1 particular legislation which we believe is an
2 important and innovative and very promising way to
3 ensure that people who are considering owning guns
4 are aware of the risks that they might pose to their
5 households and their family members. Brady is proud
6 to support this proposed legislation. While the US
7 Supreme Court has held that law-abiding responsible
8 citizens have a constitutional right to a gun in the
9 home for self-defense, the court recognized that the
10 Second Amendment allows for reasonable regulations,
11 which would certainly include this ordinance. It is
12 unquestionably constitutional. Indeed, gun owners
13 and potential gun owners have a right and a need to
14 know the truth about guns. Warnings about the risks
15 posed by firearms in the home are much needed, to be
16 clear. Study after study has confirmed that bringing
17 a gun into one's home increases one's risk of
18 suicide, domestic violence-related fatalities, and
19 unintentional shootings. Yet, at the same time as
20 these studies have made the risk posed by guns in the
21 home undeniable, the gun industry has continued to
22 market guns as enhancing safety. This marketing is
23 misleading as it contradicts the scientific truth
24 about the risks posed by guns. It also is dangerous
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2 as it gives gun owners a misimpression about those
3 risks and prevents them from making a truly informed
4 decision before exposing themselves and their
5 families to these risks. More dangerously still,
6 studies show that a significant number of gun owners
7 do not safely store their guns as they should,
8 especially when there are children in the home. When
9 people are under a misimpression as to the risks and
10 benefits posed by having guns in the home, it follows
11 that they will be less likely to feel that it's
12 important to store those guns safely to minimize
13 those risks. This bill addresses those problems in a
14 way that can be important and impactful. It ensures
15 that gun owners and perspective gun owners will hear
16 some of the truth about the risks that they and their
17 families can be exposed to when they bring a gun into
18 their home. We hope it is enacted and becomes law.
19 They say the truth can set you free. It can also
20 save lives. Thank you for inviting us to speak on
21 this important issue and for your support of this
22 measure.

23 CHAIRPERSON GIBSON: Thank you very much.
24 We appreciate your presence here. Thank you.

25 MARIELLE GETZ: Thank you.

CHAIRPERSON GIBSON: You may begin.

KELLY GRACE PRICE: Hi, good afternoon.

I'm Kelly Grace Price. I'm delighted to speak in front of you. Thank you so much, Councilwoman Gibson for seeing me again. The last time that I saw you was on June 19th when we sat here and discussed NYPD technology with the NYPD during the technology hearing, and I remember specifically that you had asked Vacca-- am I saying his name right? I would ask the NYPD representative that was left behind to take notes on advocacy, but she apparently after playing the crossword on her phone all through your hearing, which I took photos of, just decided to leave before I testified. So, I can't ask her if that was Vacca that you questioned, but I remember very specifically that you grilled Vacca and you asked him for detailed reports on the domain alert awareness system, which is another NYPD database that holds data on all of us, not just people that have-- had entanglements with the criminal justice system like myself, even though all of my entanglements have been dismissed and sealed. You might remember that Cy Vance arrested me and prosecuted me on 324 counts of the now defunct CPLR240.30 that Ron Koobi [sp?]

1 challenged in front of former Chief Judge Jonathan
2 Lippman in 2014 and got that particular statute
3 dismissed and sealed, but I proud Mount Holio [sp?]
4 graduate, former employee of Bill Gates and J.P.
5 Morgan got sent to the Rose M. Singer Center over
6 that particular statute. So, I'll just add as a side
7 note that I'm aware you're probably friends with Cy
8 Vance because of your position, but I've been having
9 a great couple of weeks watching him blow in the
10 wind. But what I want to remind you about is that
11 I've been complaining for years that since Cy Vance
12 labeled me as a fabricator of domestic violence and
13 threw me in Rikers Island, I have been marked as such
14 in the NYPD database, and every single point of
15 contact that I have with the NYPD goes south very
16 quickly. In August my landlord changed the locks on
17 my building. I live behind the synagogue on 187th
18 street, and you may or may not know that there is an
19 A roof that is being built and created around that
20 particular synagogue. So, everyone that's non-
21 Orthodox is being chased out of the neighborhood. I
22 called the police to make the illegal lock-out
23 complaint. As per NYPD handbook provision 117.11,
24 whenever there's an illegal lockout, the NYPD are
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1 mandated to issue a summons and they can choose to
2 make an arrest. Well, the police came. They swiped
3 my ID, and I have no criminal background at all. I'm
4 a Mount Holyoke graduate. I just finished working at
5 the National Organization for Women. You may remember
6 I was working at the Urban Justice Center's mental
7 health project. The NYPD swiped my ID. They saw
8 that I still had this misgosh [sic] hanging out of
9 the Domain Alert Awareness System, and they made me
10 go to this psych ward on a beautiful Saturday to be
11 evaluated. As soon I walked into the psych ward, and
12 I have no EDPs, nothing in my background, but for
13 some reason this is added to my police record. As
14 soon I walked into the emergency room, the Doctor
15 knowing that I was there on some sort of EDP status
16 evaluated me, and I was discharged 20 minutes later.
17 I had to walk home barefoot with my service dog who
18 didn't have a leash. I didn't have my shoes. I didn't
19 have my wallet, because the NYPD had declared that I
20 needed to immediately go to the psych ward to deal
21 with this situation. This was an illegal lock-out.
22 The landlord should have been given a summons. But
23 these are the kind of things that normal every-day
24 citizens like myself have to deal with, not just--
25

1 the advocates don't just have stories, but citizens
2 are sitting right in front of you with stories about
3 how we're getting screwed by the-- pardon my French,
4 but no one's in here-- by the bullshit that's in
5 these databases. I currently have a piece of federal
6 litigation in the southern district trying to get
7 this stuff expunged, but it's the only way to clear
8 my record. So, I would urge you please, and I would
9 urge the sponsor Councilman Johnson to also consider
10 that it's not just what's in the OATH databases, and
11 it's not just what's in the criminal justice
12 databases, but what's in the Domain Alert Awareness
13 System that includes a behemoth of persons that don't
14 have criminal records and don't have criminal
15 backgrounds. Please, please, please address that
16 because it's sinking us. Basically, these databases
17 have created a McCarthy-istic black list of people
18 that no longer receive police services, and remember,
19 security is the most sacrosanct promise that you can
20 offer us as citizens. Without that there's really
21 just nothing left but anarchy. Thank you so much for
22 listening to me as always, Councilwoman Gibson, and
23 thank you for your service to our city.
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COMMITTEE ON PUBLIC SAFETY

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CHAIRPERSON GIBSON: Thank you very much.
Thank you for coming today. We really appreciate it.
Thank you. Thank you both. I'd like to acknowledge
for the record that we received written testimony
from the Campaign to Keep Guns off Campus, Artner
[sic] Center on Family Violence, Matthew Miller,
Professor of Health Sciences and Epidemiology from
Northeastern University, the Community Service
Society, as well as New Yorkers Against Gun Violence.
Thank you to all who joined us. Thank you to the
staff of the Public Safety Committee for a great
hearing today. More to come. Thank you to the
Sergeant at Arms. This hearing of the Committee on
Public Safety is hereby adjourned.

[gavel]

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COMMITTEE ON PUBLIC SAFETY

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 October 30, 2017