

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CIVIL AND
HUMAN RIGHTS

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January 22, 2020
Start: 10:17 a.m.
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HELD AT: Committee Room - City Hall

B E F O R E: Mathieu Eugene
Chairperson

COUNCIL MEMBERS: Mathieu Eugene
Daniel Dromm
Brad Lander
Bill Perkins
Ydanis Rodriguez

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

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Deputy Commissioner
Policy and Intergovernmental Affairs
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Jared Trujillo

1 COMMITTEE ON CIVIL
AND HUMAN RIGHTS

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2 Testing one, two, one two. Today is
3 January 22. Today's meeting is on Civil and Human
4 Rights, being recorded by Keith Polite.

5 CHAIRPERSON EUGENE: Good morning. My
6 name is Mathieu Eugene and I'm the chair of the Civil
7 and Human Rights Committee. Today our committee will
8 be hearing proposed Introduction Bill Number 1314-A,
9 [inaudible] discrimination based on [inaudible]
10 racial [card] and other [related matters], and we'll
11 be voting also for preconsidered Resolution
12 recognizing January 27, 2020, as Holocaust
13 Remembrance Day, in the week beginning on January 27,
14 2020, as a citywide week of Holocaust education.
15 Finding secure employment in the [inaudible] is
16 difficult at the best of time. Having a criminal
17 record adds an additional barrier which has
18 [inaudible] of negative consequences. Given that the
19 people of color are disproportionately targeted for
20 arrest. They bear a significant burden [inaudible]
21 again those with criminal history. In 2015 the New
22 York City Council mounted a significant effort to
23 address this issue by enacting the Fair Chance Act.
24 Under the legislation New York City employers are
25 forbidden from inquiring about a job application

2 criminal history prior to making a conditional offer
3 of employment. Similar Ban the Box laws, as they are
4 commonly referred to, now exists in 35 states, in 150
5 cities across the country. And New York City's law
6 is still considered to be one of the strongest
7 examples. While we are proud of the positive impact
8 this law has brought there remain some gaps and we
9 see an opportunity to improve and strengthen the
10 existing law. Currently no protections exist for
11 those who are employed and face criminal accusations
12 and convictions. Further, those who a pending
13 judgment in contemplation of dismissal, are pending
14 arrests and criminal accusations, and those with
15 youthful offender adjudications are not included
16 under the city's Fair Chance Act. It is estimated
17 that 70,400 misdemeanor charges in 2017 were
18 adjourned, contemplating dismissal. The vast
19 majority of these cases were eventually dismissed.
20 Yet because of a lack of unemployment protection
21 attorneys often counsel their client to plead guilty
22 to avoid employment consequences. This is an
23 unacceptable situation that both the state and the
24 city are seeking to remedy. If enacted, Intro 1314-A
25 would therefore add the additional classification to

2 the list of categories precluded from criminal
3 history inquiry prior to conditional offer of
4 employment. Lastly, 1314-A aims to minimize the
5 barriers to obtaining a license or permit by
6 forbidding discrimination for minor violation and
7 other non-criminal offense. We hope that by
8 implementing these changes the [inaudible] can
9 continue to strengthen the protection offered by a
10 Fair Chance Act. We look forward to hearing feedback
11 from the administration and stakeholders [inaudible]
12 to achieve this end. We are also hearing and voting
13 on a very important resolution to recognize Holocaust
14 Remembrance Day. On November 1, 2005 the United
15 States General Assembly adopted a resolution to
16 designate January 27 as International Day for
17 commemoration and memory of the victims of the
18 Holocaust. This date represents the day that
19 Auschwitz-Birkenau, one of the largest 40
20 concentration camps that comprised the Auschwitz
21 complex was finally liberated. By assigning an
22 international day of remembrance the United States,
23 United Nation aims to reaffirm that the Holocaust,
24 which result in a number of one-third of the Jewish
25 people along with countless members of other

2 minorities will forever be a warning to all people of
3 the danger of hatred, bigotry, racism, and prejudice.
4 Before we begin, I would like to mention the council
5 members who are here. We have Council Member Dromm
6 and member of the committee, and also we have Council
7 Member Deutsch and Public Advocate Jumaane Williams,
8 and both of them are sponsors of the different
9 legislation. One we're going to vote and the other
10 one we're going to have a hearing on. And I would
11 like also to thank the members of the committee, the
12 people worked very hard to make this public hearing
13 possible. I want to thank the committee staff also,
14 Valkie Marag, senior counsel to the committee, Liasco
15 Peg, Policiano Liss, Living Sing, financial analyst,
16 as well as my staff, David Suarez. Now I think we
17 are going to vote on the resolution, but before we do
18 that I will call Council Member Deutsch, who is the
19 sponsor of the resolution, to make a statement.
20 Council Member Deutsch, please.

21 COUNCIL MEMBER DEUTSCH: Thank you, thank
22 you very much, Chair, and good morning to everyone.
23 This resolution will for the second year in a row
24 acknowledge International Holocaust Remembrance Day
25 in New York City on January 27. Additionally, it

2 will establish a citywide week of Holocaust
3 education, urging educators and parents to broach the
4 subject with their students and children. Growing up
5 as the son of Holocaust survivors it was ingrained in
6 my identity that my parents had lived through
7 unimaginable horrors. Although, like many survivors
8 they didn't even talk about specifics, their
9 experiences during the war had a significant impact
10 on our family. Knowledge of those atrocities that my
11 parents and millions of others suffered through just
12 a generation ago is ever-present in my mind. It is
13 an extremely personal endeavor of mine to ensure that
14 our children and our grandchildren and the future
15 generations never forget what happened during the
16 Holocaust. We all know the saying, those who do not
17 learn history are doomed to repeat it. Baseless
18 hatred, unfounded bias, and anti-Semitism were all
19 factors in what eventually led to the genocide of six
20 million Jews. One of the most frightening surveys to
21 come out in the last year indicated that 66% of
22 American millennials don't know what Auschwitz is.
23 Furthermore, 31% believe that two million or fewer
24 Jews were killed during the Holocaust and 45% cannot
25 even name one concentration camp. This certainly

2 indicates that we have our work cut out for us. As
3 the generation that lived through the war is
4 dwindling, it is more important than ever that we
5 face this crisis head on, because it is indeed a
6 crisis. In a time where we are seeing a rise in
7 violent anti-Semitism and hate crimes throughout our
8 city and across the world, we have a duty to ensure
9 that young people are knowledgeable about the
10 Holocaust. If we want to equip the next generation
11 with the tools they need to fight bigotry and build a
12 peaceful future, they need to educate them about the
13 consequences of prejudice and mistreating others. We
14 cannot afford to lose the memories of those who
15 survived the Holocaust. We must never let the pain
16 and loss that they suffered fade into nothingness.
17 Thank you.

18 CHAIRPERSON EUGENE: Thank you very much,
19 Council Member Deutsch. Thank you for this wonderful
20 resolution, and I urge my colleagues to vote yes on
21 it. And now I would like to invite Public Advocate
22 Jumaane Williams to present his comment on the
23 legislation Introduction 1314-A.

24 PUBLIC ADVOCATE WILLIAMS: Thank you, Mr.
25 Chair. I greatly appreciate it. I'd also like to

2 add my name to Council Member Deutsch's resolution,
3 and I want to thank the chair and the Committee on
4 Civil and Human Rights for holding this hearing on
5 the Extending Employment Protections for Individuals
6 with Criminal Records through the passage of the
7 Fair Chance Act 2.0. For the one in three Americans
8 who have criminal arrest records, criminal and arrest
9 records employment opportunities may be significantly
10 diminished as employers have historically
11 discriminated against individuals who are justice
12 involved. This is especially true for individuals of
13 more color, who have been the victims of mass
14 incarceration and over-criminalization. To address
15 this disparity, I am proud to have worked with the
16 City Council to pass the nation's strongest Ban the
17 Box policy to ensure that New Yorkers with an arrest
18 or conviction record would have an equal opportunity
19 to compete for the jobs. This legislation has
20 decreased employment discrimination and created new
21 opportunities for those who have criminal records.
22 It has been five years since the passage of the Fair
23 Chance Act and it is time we expand the protections
24 we provide to individuals with criminal records by
25 closing some loopholes. Currently, banning the box

2 does not protect individuals who have pending
3 adjournments in contemplation of dismissals, or ACDs,
4 non-pending arrests and criminal accusations, or
5 unsealed violations, such as loitering for the
6 purposes of prostitution. The Fair Chance Act 2.0
7 prohibits the aforementioned violations and criminal
8 charges from being considered during the hiring
9 process and it extends protections from the original
10 Fair Chance Act to individuals who are currently
11 employed. I urge members of the committee to extend
12 the reach of the Fair Chance Act for those seeking
13 employment in New York City. Let's reduce barriers
14 for justice-involved individuals and create more
15 equitable employment opportunities for those with
16 criminal records. Thank you very much for your time
17 and consideration. And just to clarify, this just
18 extends protections to those areas covered and once
19 again it lasts until someone is offered a conditional
20 offer of employment and then the research can begin
21 and what it does is it allows someone to respond in
22 case someone does not get a job solely on something
23 that is justice involved, they can then respond to
24 it, and it is now and had been before this illegal to
25 discriminate against, but we now have a way to prove

2 that discrimination. What often would happen is
3 people would give in their resumes and it would get
4 thrown in the trash and you would have no way to
5 prove that it was discrimination. There are some,
6 ah, caveats here. If there is a crime that is
7 closely linked to the job you're applying for there
8 are, you cannot force someone to hire you for that.
9 There's protections with sexual abuse. And this does
10 not force anyone to hire anybody. All it does is
11 provide an equitable and equal playing field for
12 everyone. And as often predicted, but not happening,
13 since the five years has passed the sky has not
14 fallen. Thank you so much.

15 CHAIRPERSON EUGENE: Thank you very much,
16 Public Advocate Jumaane Williams. Thank you very
17 much. Now we're being joined by Council Member Inez
18 Barron. Thank you. I think now we can proceed to
19 the votes. And I would like to ask the clerk to call
20 the roll, please.

21 COMMITTEE CLERK MARTIN: William Martin,
22 Committee Clerk. Roll call vote, Committee on Civil
23 and Human Rights, on preconsidered resolution. Chair
24 Eugene.

25 CHAIRPERSON EUGENE: I vote aye.

1 COMMITTEE ON CIVIL
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2 COMMITTEE CLERK MARTIN: Barron.

3 COUNCIL MEMBER BARRON: I vote aye.

4 COMMITTEE CLERK MARTIN: Dromm.

5 COUNCIL MEMBER DROMM: Are we voting on
6 the resolution?

7 CHAIRPERSON EUGENE: Yes.

8 COUNCIL MEMBER DROMM: Only?

9 CHAIRPERSON EUGENE: Yes.

10 COUNCIL MEMBER DROMM: OK. I vote aye
11 and I want to thank Council Member Deutsch for
12 introducing this and sort of making sure that we do
13 not forget the terrible, terrible tragedy and
14 probably the worst hate crime ever committed, which
15 was the Holocaust. Thank you.

16 CHAIRPERSON EUGENE: And we have been
17 joined also, if you allow me, Mr. Clerk, by Council
18 Member Perkins. We are voting on a resolution to
19 declare the Holocaust Remembrance Day in New York
20 City.

21 COMMITTEE CLERK MARTIN: Council Member
22 Perkins.

23 COUNCIL MEMBER PERKINS: I vote aye.

24 COMMITTEE CLERK MARTIN: A vote of 4 in
25 the affirmative, zero in the negative, and no

2 abstentions. The item has been adopted by the
3 committee.

4 CHAIRPERSON EUGENE: Thank you, Mr.
5 Clerk, and I want to take the opportunity also to
6 thank you for your service and no public hearing,
7 especially this public hearing, wouldn't be possible
8 without your service and your contribution. Thank
9 you so much.

10 COMMITTEE CLERK MARTIN: Thank you.

11 CHAIRPERSON EUGENE: Now I would like to
12 call the first panel. I'm going to call, ah, you're
13 already here, thank you very much. And I thank you
14 for your participation, your presence, and everything
15 that you are doing on behalf of the New Yorkers.
16 Thank you so much. We have with us Ms. Dana Sussman,
17 who is the deputy commissioner in the New York City
18 Human Rights Commission. Thank you very much. And
19 also Zoe Chelinz, I believe, senior policy counsel.
20 You can, will you please [inaudible].

21 COUNSEL: Do you swear or affirm to tell
22 the truth before this committee and to answer council
23 member questions honestly?

24 UNIDENTIFIED: Yes.

25 COUNSEL: Thank you.

2 DEPUTY COMMISSIONER SUSSMAN: Good

3 morning, Chair Eugene, Public Advocate Williams, and
4 members of the Committee on Civil and Human Rights.

5 Thank you for convening today's hearing on Intro

6 1314-A. I'm Dana Sussman, Deputy Commissioner for

7 Policy and Intergovernmental Affairs at the New York

8 City Commission on Human Rights. The commission is

9 proud to enforce one of the broadest and most

10 protective laws prohibiting discrimination on the

11 basis of one's involvement in the criminal legal

12 system, the Fair Chance Act. And we are excited to

13 be here today to discuss Intro 1314-A, which would

14 expand protections in meaningful and important ways

15 for people currently employed or seeking employment

16 and who have prior or current engagement with the

17 criminal legal system. We think Intro 1314-A is

18 vital to continuing this important work and we

19 strongly support the bill. The Fair Chance Act was

20 signed into law in June 2015 and went into effect in

21 October of that year. It was one of the first

22 substantive changes to the New York City Human Rights

23 Law under Commissioner Carmelyn P. Malalis' tenure

24 and a groundbreaking shift in how employers must

25 advertise, interview, and consider candidates for

2 employment. By "banning the box", which refers to
3 removing the box an applicant is required to check on
4 an application indicating whether they have a
5 criminal record, prohibiting the use of criminal
6 background checks until a conditional offer is made,
7 and then providing a standard notice and process for
8 withdrawing the conditional offer under limited
9 circumstances, it gives people with criminal history
10 access to employment in ways that have long been out
11 of reach. And the implementation of New York City's
12 Fair Chance Act, or FCA, provides a case study in how
13 the commission under Commissioner Malalis' leadership
14 undertook a comprehensive and multi-pronged approach
15 that involved policy development and rule-making,
16 education and outreach, a public awareness campaign,
17 and aggressive enforcement, including case
18 resolutions that incorporate restorative justice
19 principles. Leading up to the Fair Chance Act's
20 effect date, the commission published its second
21 legal enforcement guidance, which provides clear and
22 transparent information and examples as to how the
23 commission will enforce the FCA'S protections,
24 enumerating specific per se violations of the FCA and
25 published a template notice, a notice form, for

2 employers to use to share with applicants when
3 undertaking the Fair Chance Act analysis. In
4 addition, the commission published fact sheets, a
5 multilingual pamphlet, and frequently asked questions
6 on its website that are responsive to questions the
7 commission receives from members of the public and
8 employers. In 2017 the commission, after notice and
9 comment, promulgated rules codifying most of the
10 legal enforcement guidance. The Fair Chance Act
11 rules also established a new early resolution process
12 in which the commission's law enforcement bureau, in
13 its discretion, can issue fines pursuant to a
14 prescribed penalty schedule in an expedited manner,
15 where per se violations of the FCA are identified.
16 This has allowed the commission to manage its
17 resources and build in efficiencies, so that the
18 commission can focus its efforts on high-impact
19 cases. The rules went into effect in August of 2017.
20 To educate the public on this major expansion of
21 legal protections the commission developed two Fair
22 Chance Act-focused workshops, which also covered
23 prohibitions on obtaining and using applicants'
24 credit history during the hiring process for two
25 different audiences, employers, to understand their

2 obligations, learn where to find resources, and
3 obtain clear information how to properly engage in
4 the Fair Chance process. And one workshop for job
5 applicants, workers, and service providers who work
6 with people with criminal legal involvement to
7 understand their rights, how to report to the
8 commission, and what remedies are available to them.
9 The commission offered these workshops to community-
10 based organizations, business associations, houses of
11 worship, and to sister agencies. The commission also
12 hosted these free workshops at its five borough-based
13 offices on a monthly or quarterly basis during the
14 first three years after the law went into effect, and
15 we continue to offer them regularly. Since 2015, the
16 commission has provided nearly 1200 trainings on the
17 Fair Chance Act across all five boroughs, including
18 over 500 trainings on Riker's, over 50 additional
19 trainings in partnership with the Department of
20 Correction, Probation, and NYCHA, and over 100
21 trainings to the New York State Department of
22 Correction and the New York State Division of Parole.
23 In total, the commission has provided in-person live
24 training on the Fair Chance Act to 44,000 New Yorkers
25 since its passage in 2015. The commission has also

2 prioritized outreach and education to business
3 entities to ensure they have the information and
4 tools they need to comply with the Fair Chance Act
5 and other requirements under the city Human Rights
6 Law. For example, the commission has presented on
7 the Fair Chance Act to the Brooklyn Chamber of
8 Commerce, the Richmond County Black and Minority
9 Chamber of Commerce, the United Neighborhood Civic
10 Association, and the Bucks Business Network on Staten
11 Island. The commission has also regularly presented
12 to the management bar, the law firms that counsel
13 large employers on compliance, and to various bar
14 associations on this law and others. In addition,
15 the commission has educated millions of New Yorkers
16 on their rights and obligations under the Fair Chance
17 Act through a robust public outreach campaign that
18 launched in late 2015 and included multilingual ads
19 in subways, online, in newspapers, and on ethnic and
20 community radio stations. The commission's law
21 enforcement bureau has aggressively enforced the Fair
22 Chance Act using a variety of investigatory tools and
23 methods for maximum impact. Since 2015 the
24 commission has filed 456 complaints of criminal
25 history discrimination and as of earlier this money

2 currently has 174 open matters related to the Fair
3 Chance Act. The commission has conducted a total of
4 832 tests related to the Fair Chance Act and filed a
5 total of 69 commission-initiated complaints that were
6 a result of testing. And I will note that many of
7 the amazing staff of the commission who do this work
8 every day are here today at the hearing, so I wanted
9 to give them a shout-out. The commission's law
10 enforcement bureau has resolved cases with large
11 employers, including, for example, City MD, Yelp,
12 Mount Sinai Medical Systems, and CVS, insuring
13 maximum impact for New Yorkers and in some instances
14 has even negotiated resolutions that include a
15 commitment to ban the box nationwide, beyond what
16 employers are legally obligated to do. In addition
17 to major policy changes, trainings, and other
18 affirmative relief, the commission has ordered a
19 total of, I'll narrow this up, over 1 million dollars
20 in damages and penalties since 2015, representing
21 nearly \$700,000 in damages directly to complainants
22 that have been harmed by violations of the Fair
23 Chance Act, and over \$350,000 in civil penalties to
24 the general fund of the City of New York. In other
25 cases, the commission, in its discretion, has not

2 levied any penalties at all where an employer agrees
3 to take immediate action to correct a violation,
4 undergoing a training, and come into compliance. A
5 few case summaries highlight the law enforcement
6 bureau's dedicated efforts to ensure widespread
7 change, relief for victims of discrimination, and
8 restoration for communities impacted by these
9 practices. And I'll just highlight two cases in my
10 testimony. In a case in which an individual sought a
11 job as a custodian the applicant identified that the
12 application contained illegal questions about
13 criminal history and the applicant was unlawfully
14 interrogated about his criminal history during his
15 interview. Afterwards, he did not receive an offer
16 for the position and he filed a complaint with the
17 commission, alleging criminal history discrimination
18 and violations of the FCA. To resolve the case,
19 respondent agreed to bring its employment practices
20 in line with the city Human Rights Law, train the
21 company's managers, partner with certain re-entry
22 organizations to include their clients who have
23 criminal histories in the job applicant pool moving
24 forward, pay the complainant \$35,000 in emotional
25 distress damages, and \$7000 in back pay, and pay a

2 \$20,000 civil penalty to the general fund of the City
3 of New York. In another case, an applicant for
4 employment with Yelp filed a complaint alleging that
5 the company made an unlawful pre-employment inquiry
6 about his criminal conviction history, in violation
7 of the FCA, and denied him employment based on that
8 record. The commission's law enforcement bureau
9 conducted an investigation and audited Yelp's
10 employment policies. They found that Yelp had
11 unlawfully run a background check on the complaint
12 prior to making a conditional offer of employment and
13 had unlawfully denied him employment because of a
14 two-year-old misdemeanor conviction. Yelp, the
15 complainant, and the commission entered into an
16 agreement requiring the company to pay \$20,000 in
17 emotional distress damages to the complainant, a
18 \$10,000 civil penalty to the general fund of the City
19 of New York, and engage an extensive affirmative
20 relief, including training 800, training more than
21 800 New York City-based employees on the city Human
22 Rights Law, including the FCA, formally committing to
23 ban the box at all of its offices nationwide,
24 displaying the commission's notice of rights and Fair
25 Chance Act posters at conspicuous locations

2 accessible to its New York City-based employees, and
3 revising and updating its internal policies regarding
4 applicants with criminal conviction records. In
5 particular, in an unprecedented move beyond the
6 protections of the existing law, Yelp agreed to
7 disregard entire classes of convictions and
8 convictions over a certain number of years old when
9 they are screening and hiring for employment. I will
10 turn it over to my colleague, Zoe Chenitz, senior
11 policy counsel, to discuss the key changes to the
12 Fair Chance Act that Intro 1314-A would codify.
13 Thank you for convening today's hearing to discuss
14 this incredibly important bill. The commission is
15 dedicated to using all the tools at our disposal to
16 ensure that the Fair Chance Act fulfills its promise
17 to reduce barriers to employment for people with
18 involvement in the criminal legal system, and we hope
19 to incorporate the additional protections afforded by
20 1314-A into the agency's work and mandate. Thank
21 you.

22 CHAIRPERSON EUGENE: Thank you very much.

23 ZOE CHENITZ: Good morning, Chair Eugene,
24 Public Advocate Williams, and members of the
25 Committee on Civil and Human Rights. Thank you for

2 convening today's hearing on 1314-A. I'm Zoe
3 Chenitz, senior policy counsel at the New York City
4 Commission on Human Rights. As my colleague, Dana
5 Sussman, highlighted in her testimony, New York
6 City's Fair Chance Act has been a leading model
7 across the nation in terms of promoting fair
8 employment opportunities for people impacted by the
9 close, ensuring they have an opportunity to obtain
10 employment based on their merit and qualifications,
11 to support themselves and their families, and to
12 contribute meaningfully to their communities. The
13 commission strongly supports Intro 1314-A, which will
14 strengthen the Fair Chance Act in several important
15 ways. I would like to focus on four key changes that
16 the bill will make to the New York City Human Rights
17 Law. First, the bill provides new procedural
18 protections for job applicants and current employees
19 with pending criminal cases, meaning that employers
20 may not arbitrarily take adverse action, such as
21 denying or terminating employment because of an
22 arrest or open criminal case, without first
23 considering several factors related to whether the
24 alleged wrongdoing is related to the job or would
25 pose an unreasonable risk to people or property.

2 This important change ensures that people who have
3 not been convicted of a crime and are presumed
4 innocent under the law will receive similar
5 employment protections to those already available for
6 someone convicted of a crime. Specifically, the bill
7 requires that before an employer takes an adverse
8 action against an applicant or employee based on a
9 pending case they must first request information from
10 the person and consider six relevant fair chance
11 factors that are similar to those outlined in Article
12 23-A, Section 753 of the Correction Law. The
13 differences from Article 23-A reflect the fact that
14 unlike old convictions which may have occurred in the
15 distant past, pending cases concern current
16 interactions with the criminal system. With respect
17 to pending cases, the relevant fair chance factors
18 would include 1) the city's policy objective of
19 overcoming stigma toward and unnecessary exclusion of
20 people with criminal justice involvement from
21 licensing and employment; 2) the specific duties and
22 responsibilities related to the person's employment;
23 3) the bearing of the alleged criminal offense on the
24 person's fitness or ability to perform the duties and
25 responsibilities of the job; 4) the seriousness of

2 the alleged offense; 5) the legitimate interest of
3 the employer in protecting property and the safety
4 and welfare of specific people who are the general
5 public; and 6) if the person is a current employee
6 any additional information they can provide of
7 rehabilitation or good conduct, including their
8 history of positive job performance. Taking into
9 account all of the relevant fair chance factors that
10 I have just listed, the employer could take an
11 adverse action only if they determine that there is a
12 direct relationship between the job and the
13 wrongdoing alleged in the pending case, or that
14 granting or continuing the person's employment would
15 involve an unreasonable risk to property or to the
16 safety or welfare of specific people or the general
17 public. As with the fair chance process that is
18 already applicable to convictions, the employer will
19 have to provide the applicant or employee with a copy
20 of the criminal history information relied on by the
21 employer and a written copy of the employer's
22 analysis of the relevant fair chance factors, and
23 then give the person time to respond, for example
24 with information about errors in the criminal
25 history, faults in the employer's analysis, or with

2 mitigating information. As with the existing
3 protections for criminal history under the Fair
4 Chance Act, these new protections based on pending
5 cases would not apply to police officers, peace
6 officers, or other positions at law enforcement
7 agencies, or where the law imposes a mandatory
8 forfeiture, disability, or bar to employment. In
9 addition, the new protections for pending would not
10 apply to public employees, who are already eligible
11 for procedural protections against arbitrary
12 dismissals, pursuant to Section 75 of the Civil
13 Service Law, or pursuant to agency rules or other
14 law. The minority of public employees who are not
15 eligible for such alternative protections and the
16 majority of employees working in the private sector
17 will gain protections under the proposed amendment to
18 the Fair Chance Act. In the absence of employment
19 protections for pending criminal cases, legally
20 innocent people with pending criminal cases enjoy,
21 paradoxically, less robust employment protections
22 than people who have been convicted. As a result,
23 people who wish to fight the criminal charges against
24 them may risk greater job uncertainty while their
25 case is open than they would if they plead guilty to

2 quickly resolve their case. This bill would protect
3 the rights of the accused and would help to mitigate
4 collateral employment consequences, particularly for
5 people of color and lesbian, gay, bisexual,
6 transgender, and queer people who are
7 disproportionately impacted by the criminal legal
8 system. Second, the bill would add protections for
9 employees impacted by the criminal system during
10 their employment. Currently the Fair Chance Act only
11 protects current employees from adverse action based
12 on convictions that occurred prior to the start of
13 their employment. Under the proposed amendment
14 current employees would also have protections against
15 adverse actions based on a pending case, as I
16 described earlier, or a conviction that occurs during
17 employment. As with convictions predating
18 employment, employers would have to engage in an
19 analysis similar to that which I described earlier.
20 In short, an employer could take an adverse action
21 only after considering the relevant fair chance
22 factors and determining either that there is a direct
23 relationship between the alleged or convicted conduct
24 and the job, or that continued employment would
25 involve an unreasonable risk to the safety or welfare

2 of people or property. The employer would also be
3 required to provide the employee with a written copy
4 of its fair chance analysis along with the criminal
5 history information on which the analysis was based
6 and give the employee a reasonable time to respond.
7 The employer would be permitted to place the employee
8 on unpaid leave while it conducts the fair chance
9 process. Consistent with existing exceptions to the
10 Fair Chance Act, the bill's protections for current
11 employees would not apply for police officer, peace
12 officers, or other employees of law enforcement
13 agencies or to positions designated as exempt from
14 the fair chance process by the Department for
15 Citywide Administrative Services, or DCAS. In
16 addition, as I noted earlier, protections for pending
17 cases would not apply where the employee is otherwise
18 protected under Civil Service Law Section 75, agency
19 rules, or another law. These procedural protections
20 are important because they will prevent an arrest
21 from automatically causing job loss while still
22 protecting the legitimate business interest of
23 employers. Third, the bill would prohibit employers
24 from considering violations in non-criminal
25 convictions that are unsealed. Currently employers

2 are prohibited from asking about or taking any
3 adverse action based on violations or non-criminal
4 convictions that have been sealed, a process that
5 happens automatically after a period of time for most
6 violations. However, there is no protection for
7 workers with such adjudications during the period
8 prior to sealing, which typically lasts between six
9 months and one year, or if the violation is not
10 subject to sealing, as is the case for the violation
11 of loitering for the purposes of prostitution. In
12 short, a loophole in the current law means that
13 people whose criminal outcomes are deemed so
14 inconsequential that they may not be considered at
15 all once they are sealed have no employment
16 protections before they seal. Intro 1314-A would
17 close the existing loophole, ensuring minor contact
18 with the criminal legal system does not hinder the
19 ability to seek and keep employment. This amendment
20 will be particularly impactful for people convicted
21 of loitering for purposes of prostitution, a
22 violation that critics have referred to as walking
23 while transgender because of the frequency with which
24 it is used to disproportionately police transgender
25 women of color, often criminalizing ordinary conduct,

2 such as standing on a street corner with one's
3 friends. By adding employment protections for
4 unsealed violations, which include all convictions
5 for loitering for purposes of prostitution, this bill
6 will help to reduce the collateral consequences of
7 this outdated offense. This bill will provide
8 similar new protections in the area of licensing with
9 respect to unsealed violations, non-criminal
10 offenses, and the underlying arrests that results in
11 such outcomes. Fourth, the bill will provide
12 procedural protections if an employer seeks to take
13 adverse action based on perceived misrepresentations
14 about a person's criminal history. If there is any
15 perceived conflict between a person's self-report of
16 their criminal history and a background check the
17 employer can currently take adverse action without
18 any further input or clarification from the person.
19 That is troubling, because background checks often
20 include inaccurate or outdated information. In
21 addition, employers may use insignificant conflicts
22 between what a person has represented and what
23 appears on the record as a pretextual basis to reject
24 them from a job. This bill would require that before
25 an employer takes adverse action based on a perceived

2 misrepresentation they first provide the person with
3 the information that they believe demonstrates the
4 misrepresentation and provide the person a reasonable
5 time to respond. In other words, the bill will
6 enable people to explain their situation before an
7 employer unilaterally takes an adverse action based
8 on their belief that the applicant has lied about
9 their criminal history. This change will be
10 particularly helpful to people with old and minor
11 convictions who may be less likely to remember them.
12 For all the reasons I have discussed, the commission
13 strongly supports Intro 1314-A and we encourage the
14 council to move forward with its passage. We are
15 grateful to the public advocate for sponsoring this
16 legislation and to council for taking up the issue.
17 I look forward to your questions.

18 CHAIRPERSON EUGENE: Thank you very much.
19 How many, my first question would be how many
20 complaint or inquiries does the commission typically
21 hear regarding discrimination based on someone's
22 criminal record?

23 DEPUTY COMMISSIONER SUSSMAN: So in the,
24 um, years, let's say four and a half years since
25

2 we've implemented the Fair Chance Act we filed 456
3 complaints.

4 CHAIRPERSON EUGENE: 465?

5 DEPUTY COMMISSIONER SUSSMAN: 56, 456
6 complaints.

7 CHAIRPERSON EUGENE: In the past four
8 years you said, right?

9 DEPUTY COMMISSIONER SUSSMAN: Four and a
10 half years or so since the, um, effective date.

11 CHAIRPERSON EUGENE: Do you have the data
12 in term of ethnicity, gender, how many, you know?

13 DEPUTY COMMISSIONER SUSSMAN: Sure.

14 CHAIRPERSON EUGENE: Can you talk about
15 it?

16 DEPUTY COMMISSIONER SUSSMAN: We
17 typically don't track demographic data, um, other
18 than when it's related to a protected class that an
19 individual is alleging, um, for privacy reasons and
20 other reasons, but, so I couldn't tell you today what
21 the demographic data is or the breakdown by race or
22 gender of those 456 complaints.

23 CHAIRPERSON EUGENE: But in your report
24 you have, you know, the classification according to
25

2 ethnicity and gender. You do have that for, on
3 record, right?

4 DEPUTY COMMISSIONER SUSSMAN: We have
5 protected classes, certainly, based on national
6 origin and race and color and gender, um, under the
7 city Human Rights Law.

8 CHAIRPERSON EUGENE: OK.

9 DEPUTY COMMISSIONER SUSSMAN: If I can
10 add just a little bit. Um, if, if a complaint were
11 to allege, ah, discrimination based on one of those
12 additional protected categories, um, that would be,
13 ah, reflected in the data that we do track. But we
14 don't, um, generally keep all demographic data about,
15 um, anyone who has filed a complaint.

16 CHAIRPERSON EUGENE: Could you speak a
17 little bit more about the type of complaint that you
18 receive? What type of complaint, what exactly do
19 people complain about?

20 DEPUTY COMMISSIONER SUSSMAN: Sure. So, I
21 think, again, I will, I'm able to provide some
22 anecdotal information because we are not, um, engaged
23 deeply with our law enforcement bureau every single
24 day. But from what I know of how our cases come in,
25 um, I think a lot of work early on after the

2 implementation of the Fair Chance Act, um, involved
3 ensuring that employers' advertisements, job
4 applications, and processes were compliant with the
5 Fair Chance Act. Um, a lot of what we were seeing
6 were, um, explicit per se violations of the, of the
7 city Human Rights Law and the Fair Chance Act and we
8 created an entire process to expedite and address
9 those, um, cases. So job ads that continue to say
10 background check required, no felons, no criminal
11 history, no criminal record, um, job applications
12 that continue to have a box that you had to check if
13 you had a criminal history, and so we, ah, worked
14 quickly to, to educate employers and to resolve those
15 cases. Um, we continue to receive those kinds of
16 cases today. Um, but I think that we are also
17 working on cases that involve the analysis, the Fair
18 Chance Act process, and the analysis that employers
19 have to undertake once they've under, once they've
20 extended a conditional offer and to ensure that
21 they're following that protocol properly and they're
22 weighing the factors appropriately, um, and then I
23 think you asked about sort of like what kinds of
24 cases or industries that we see. Um, so,
25 anecdotally, again, about half of those cases are

2 filed against retail or sort of customer service type
3 respondents, and then another large proportion of our
4 cases involving restaurant food service, delivery,
5 and warehouse-type jobs.

6 CHAIRPERSON EUGENE: Can you walk us
7 through the action of the Human Rights Commission
8 when you receive those complaint, what exactly, what
9 is the process? What is the first thing that you do?
10 You know, so what is the result you have had,
11 especially for the 465 cases that you were working
12 on. So that means when you receive a complaint, what
13 is the first thing that you do?

14 DEPUTY COMMISSIONER SUSSMAN: Um-hmm,
15 so...

16 CHAIRPERSON EUGENE: How do you handle
17 those complaints?

18 DEPUTY COMMISSIONER SUSSMAN: How did,
19 how do we handle, and you're asking for the, how
20 those cases resolved as well?

21 CHAIRPERSON EUGENE: Yeah.

22 DEPUTY COMMISSIONER SUSSMAN: OK. So the
23 process, um, it, it depends. There's a few different
24 ways that a case could go. In a typical case, like
25 the ones that I identified, um, in my testimony, ah,

2 an individual would likely either submit a form on
3 our website saying that they think that they have
4 faced discrimination on the basis of criminal history
5 or they would call 311 and access the commission that
6 way. Either way we would call them back and we would
7 have a human rights specialist conduct an intake over
8 the phone for about 10 minutes to assess if we have
9 jurisdiction to investigate their claim. So that
10 would require did this happen in New York City, did
11 it happen within the past year, um, was it an
12 employer. Generally that would be covered, so
13 typically you would need four or more employees, but
14 we would, if the person doesn't know we would
15 obviously have them come in and we would assess the
16 case, um, in person. The next step would be, um, the
17 individual would come in for a full intake with one
18 of our attorneys who would sit down with them, go
19 through what they experienced, draft a complaint,
20 and, um, have that individual review the complaint
21 and sign it. That complaint would then be delivered
22 to the respondent, the employer that, that engaged in
23 the violence of the city Human Rights Law. And from
24 there the respondent has an opportunity to respond
25 and answer the complaint. Then there's an

2 opportunity for the complainant to respond to that
3 answer and there's a bit of a back and forth over,
4 um, the allegations and the complaint. From there
5 the case goes into the investigation. So the
6 commission would request information, documents,
7 could interview witnesses, review policies, um, would
8 further interview the complainant or other people,
9 um, involved and could potentially expand the
10 investigation so that we are looking not only at this
11 particular incident, but if we identified that
12 policies are not in compliance we would take, we
13 would review, we would do a full audit of the
14 employer's policies, and then the case could resolve,
15 it could settle, um, at any point in this process
16 where the respondent comes forward and says listen,
17 we, we are, we want to change our policies. We'll do
18 the training. We understand that we violated the
19 law, and our attorneys who are investigating the case
20 can, can conciliate, which means it's sort of a
21 three-party case resolution. The law enforcement
22 bureau of the commission, the complainant, and the
23 respondent, um, join in a conciliation agreement
24 where we would order training, um, policy change,
25 potentially we should monitor the employer for a

2 period of time to ensure that they're compliant with
3 the law and they would have to report back to us.
4 They might have to, um, specifically send job
5 advertisements to community-based organizations that
6 work with people with criminal legal involvement so
7 that they are recruiting from a pool of people that
8 they had previously excluded. Um, there might be
9 emotional distress damages or back pay paid to the
10 complainant, um, and civil penalties that the
11 respondent could pay to the City of New York. Where
12 it's a small, um, small respondent with few resources
13 and we learn that there's a violation of the city
14 Human Rights Law one of the approaches that this
15 commissioner has taken is to call them up, send a
16 letter, say we've identified that this is a violation
17 of the city Human Rights Law. Come into compliance
18 right away and there will be no civil penalties,
19 there will be no lengthy investigation or litigation.
20 You have to undergo free training that we provide,
21 um, post a notice of rights in your workplace, and
22 change your policies. And so we will resolve cases
23 that way when we have respondents who might not have
24 been aware of the law, might not have the resources
25 to get educated on the law, and are willing to

2 resolve the cases, um, more quickly. In addition, we
3 have a pre-complaint intervention unit that's a
4 relatively new, um, unit within our law enforcement
5 bureau that does work to bring respondents into
6 compliance and to do some initially advocacy, um,
7 before a complaint is ever filed. And that is an
8 effort, again, to, um, move cases more quickly, to
9 resolve cases that might not need a complaint to be
10 filed and a lengthy investigation, particularly where
11 we know that there is a clear violation, either
12 because it's in print in a job ad or in a job
13 application. I'll stop there. That's a lot of
14 information. But, um, ah, I think you had also asked
15 about how those cases have resolved. So I mentioned
16 that 174 are currently still open. Um, of the closed
17 cases we had nearly 80 resolve as, um, settlements.
18 We had 199 closed for administrative closure. Um, we
19 had six that we found no probable cause. We had one
20 withdrawal, um, which a party, a complainant can
21 withdraw at any moment. And so I believe those are
22 where those 456 cases currently resolve. And then
23 the one other thing I'll add is that we've intervened
24 in 47 matters successfully in a pre-complaint

2 posture, um, which means that we were able to resolve
3 the matter without ever filing a complaint.

4 CHAIRPERSON EUGENE: Thank you very much.
5 You said that there are still 100, if I'm wrong
6 please give me the exact number, there are
7 approximately 174 cases still open. So why are those
8 cases are open?

9 DEPUTY COMMISSIONER SUSSMAN: So those
10 cases involve complaints that could have been filed
11 last money or six months ago, um, so those, those
12 could be, those are probably, likely to be the more
13 recent cases that remain open. It's not that 456
14 cases were filed on the effective date in 2015 and
15 some of those still remain open. This is sort of a
16 rolling process. So people can walk in to the
17 commission today and file a case, and so that would
18 count as one of our open cases.

19 CHAIRPERSON EUGENE: If there is a case
20 that is not under your jurisdiction, what is it, what
21 do you do? You drop it or you refer, you collaborate
22 with the state or federal department? What happen if
23 you are not capable of handling this case because
24 [inaudible] the law and stuff like that? What is the
25 next step? What do you do with that case?

2 DEPUTY COMMISSIONER SUSSMAN: So
3 typically, um, the, New York State has had long-
4 standing protections, um, under New York State law
5 and expanded their protections, ah, last year. So we
6 can refer cases to our counterparts, um, within New
7 York State government to take up cases. And we also,
8 if there are, if the, if our jurisdiction is limited
9 because of a statute of limitations issue, um, and
10 the individual may have a claim that they could
11 pursue in state court, we often refer cases to legal
12 service providers who are experts in this area of the
13 law, um, who could represent the individual in a,
14 potentially in a state court proceeding. So we do
15 refer. We have an extensive referral network, um,
16 where our, our info line staff and our, um, frontline
17 attorneys are referring cases to partner
18 organizations, um, if they, if we don't have
19 jurisdiction to investigate them.

20 CHAIRPERSON EUGENE: When you refer the
21 cases to your partner organizations, let's say in
22 this state, is there any follow-up to find out what
23 is the result, what is the outcome of the work that
24 the state is doing?

2 DEPUTY COMMISSIONER SUSSMAN: I, we don't
3 have a formalized process for learning how cases
4 resolve, um, when we've referred them. Informally,
5 though, we have pretty direct lines of communication
6 to many of our community-based service providers and
7 legal service providers, so that we kind of have an
8 ongoing feedback loop around the cases that we are
9 investigating, the cases that they have, how the case
10 law is developing, um, opportunities to work
11 together, um, you know a lot of that has informed our
12 work and our, and our thinking around these new, this
13 new proposed amendment. Um, so we don't have a
14 formalized process of learning where, how the cases
15 resolve, but we are in regular communication with a
16 lot of our, a lot of the key stakeholders on this
17 specific issue.

18 CHAIRPERSON EUGENE: We know that, you
19 know, in New York City it is very difficult for
20 people, especially hard-working people, immigrant
21 people or anybody, even the person who is educated,
22 are aware of the system. Some of the time, depending
23 on the case, it is very difficult to navigate through
24 the system and get the result that the person is
25 looking for. I'm talking about in New York City. So

2 that means in the state it can be more difficult for
3 somebody who is living in New York City, somebody who
4 doesn't have a clue how to enter cases with the State
5 of New York. Do you have in place something to
6 continue to assist that person, to reach out to that
7 person and say, how is your case, did the state
8 contact you, what is the issue, is there something
9 that I can assist you with? Do you do that usually,
10 or you just, the communication with the person who
11 bring the complaint to you just stop when you refer
12 the, the person to the state? What happens? I'm
13 talking about your communication, the communication
14 of the New York City Commission with these New
15 Yorkers, who is looking for a resolve of some
16 assistance. What type of assistance that you
17 continue to provide to that person who is dealing now
18 with the state?

19 DEPUTY COMMISSIONER SUSSMAN: Um, so I
20 think our ability to continue to follow up with
21 individuals who have cases that potentially are
22 pending at other agencies is challenging for us. We
23 have limited resources and an ever-expanding mandate.
24 But I think, and I also would flag that we can't, um,
25 we don't share information about the status of our

2 investigations with people who are not representing,
3 formally representing as the attorney, um, parties to
4 a case. So if someone from the state, for example,
5 were to ask me what the status of a case is that they
6 referred to us we wouldn't really be able to share
7 that information, um, because we don't share
8 information about open investigations. Um, so they
9 would, I imagine, likely do the same, um, and while
10 we, we continue to prioritize the cases that are
11 coming directly to us, to ensure that we are getting
12 back to people quickly, we are processing and moving
13 cases quickly and investigating cases thoroughly, so
14 we do not, as far as I'm aware, have, again, a
15 formalized process of checking in on how cases have
16 moved through, um, other agencies. However, I will
17 say that we have good partnerships with our
18 counterparts at the state level, um, and so if there
19 is ever someone who may reach out, reach back out to
20 us and say I know you referred me to, you know, the
21 state division and they haven't gotten back to me, we
22 will absolutely move through the process and make
23 sure that they're getting connected to the right
24 people. The only thing I wanted to add to what my
25 colleague has said is that particularly with the

2 prospective passage of this bill, New York City will
3 have the most extensive jurisdiction for protections
4 for folks with criminal system involvement, um, so
5 it's very unlikely that, at least for folks who live
6 within New York City, um, that we would have the need
7 to refer them out to the state division on human
8 rights, so the limitations would be jurisdictional
9 to, to, for example, whether you are in New York City
10 or outside the statute of limitations, which my
11 understanding is comparable for the state and for the
12 city.

13 CHAIRPERSON EUGENE: I do understand what
14 you said. But what I'm trying to understand is
15 somebody, a New Yorker, somebody who is living in New
16 York and the Human Rights Commission from New York
17 City is the organization, you know, normally that
18 should provide to New Yorkers assistance in trying to
19 resolve the discrimination case or any type of
20 challenges that they're facing in terms of
21 discrimination for jobs because of their criminal
22 background, right? So you mentioned that you refer
23 those people in case they are not under their
24 jurisdiction. I do understand that. You refer them
25 to the state. But I know that it is not easy for

2 somebody who is living in New York City to deal with
3 the state. It's very difficult. So, ah, you are not
4 trying to interfere in the, you know, the system of
5 the state, this is not what I'm saying. So while the
6 person in New York City is trying to get a resolve,
7 or to resolve the case, so I think that some
8 assistance may be provided to that person in New York
9 City, in order for that person to be aware, certain
10 situation, or if the person is in need of certain
11 assistance, contacting those, ah, agencies, you know,
12 from the state, because, you know, bureaucracy is a
13 very, very big challenge for many people. The other
14 thing I wanted to mention actually is I believe that
15 when you refer somebody to the state you don't refer
16 that person to any organization. I believe that you
17 refer that person to a governmental institution also,
18 that are entitled, that has the right to enter this
19 type of cases, and when the person is referred to the
20 state I think that the branch, the governmental
21 branch or institution or agency in the state has the
22 right also to do investigation and to enter the
23 situation. That is the reason why you referred that
24 person to the state. And, ah, if they need some
25 information on that case to be able to help the

2 person, I think they will contact the commission, and
3 I don't think the commission would refuse, I don't
4 know, if I'm wrong, would refuse to give them the
5 information that they need to resolve that case
6 because they're also government, they're also
7 fighting on behalf of the people to prevent the
8 discrimination. I think they have the right under
9 the law to do that. So I think that there should be
10 a channel of communication, not to violate the
11 privacy of the client, but to work together to get
12 the result that the client or the New Yorker deserve.
13 So when you say that you won't release or you cannot
14 release information about that person, I don't
15 understand that, because I think that the referral
16 sheet goes to official government institution that,
17 ah, under the law are [inaudible] to resolve or to
18 enter these type of cases. Can you clarify that for
19 me?

20 DEPUTY COMMISSIONER SUSSMAN: Sure, I'm
21 happy to clarify. We can, and we do, work with our
22 partner agencies, both at the city level and at the
23 state level to accept cases and to refer cases. What
24 I was mentioning is that once a case is under
25 investigation it is our practice not to disclose the

2 status of an investigation. So we would not share,
3 you know, the details of a pending open investigation
4 with anyone who is not a party to that case. So the
5 complainant, the complainant's counsel, the
6 respondent, the respondent's counsel. That is a
7 practice that we, um, that we do because our
8 investigations are not public. They're not filed on
9 an open docket available to...

10 CHAIRPERSON EUGENE: Yeah, that's...

11 DEPUTY COMMISSIONER SUSSMAN: ...um, to
12 the public. So if someone were to inquire what is
13 the status of this specific case...

14 CHAIRPERSON EUGENE: OK.

15 DEPUTY COMMISSIONER SUSSMAN: ...we cannot
16 share that, the status of a specific case. But what
17 we certainly can do is let our counterparts at the
18 state division know we received that case and it's
19 with us and we're handling it, or we've sent you
20 case, can you make sure that it's, you know, it's
21 been connected to the right people in your office.

22 CHAIRPERSON EUGENE: All right. Thank
23 you very much. Ah, in your statement you mentioned
24 that certain cases are still open, and you, you did
25 mention something about resources. You have certain

2 challenges. And because of the resources probably
3 you are not in the position to close all those cases,
4 or to enter all those cases. And I'm going back also
5 to my question and the question of my colleagues from
6 the previous, ah, public hearing. Do you have enough
7 resources? Does the commission have enough resources
8 to handle all those cases and to do the job that they
9 want to do? I know it is not easy, and I mentioned
10 that to the mayor during the budget presentation
11 briefing. I think it was last week. I do believe
12 that you may need some more funding. Let me put it
13 very straight. You know, this is a lot of work and
14 we have more work than before, because of the
15 outreach that the commissioner, I commend you for
16 that, and I thank you for that, you are doing a lot
17 of outreach. I've been in certain events and I see
18 that you are trying to reach out the people to inform
19 them about their right and their obligation, that's
20 wonderful. But when you do that, that increases the
21 number of people who are going to reach out to you,
22 and that means you're going to have more work to do.
23 You cannot do the additional work with the same
24 resources. So you don't have to answer me now,
25 because I try several times, I never get an answer,

2 but I would come back with that answer the time of
3 the budget hearing. I do believe that's, when you
4 talk about the open cases and all the challenges that
5 you are facing, I think the resources should be, ah,
6 taken under consideration also. You don't have to
7 answer me now. But if you want, could you tell me if
8 among the challenges that you're facing to resolve
9 those cases or to close the cases if the resources
10 are funding in spite of it.

11 DEPUTY COMMISSIONER SUSSMAN: Um, you're
12 familiar with our answers to these questions. Um,
13 certainly I, I will, I will emphasize that we, um,
14 are enforcing an ever-expanding law, um, which we
15 welcome. We welcome, um, we welcome this expansion
16 of the Fair Chance Act. We think it's incredibly
17 important. Um, with these expanding protections, you
18 know, as New York City is often on the front line and
19 one of the first in the nation to expand protections
20 in new areas, there comes, um, additional cases, um,
21 and additional, frankly, responsibility for us to
22 educate people about what their rights are and to
23 educate, ah, potential respondents about what their
24 obligations are under the city Human Rights Law. So
25 that is always a challenge. As we implement new

2 protections we want to do them justice and do New
3 Yorkers justice, so that they know what their rights
4 and their obligations are. Um, on this specifically,
5 we have a really good foundation on which to build.
6 Um, our Fair Chance Act implementation is one of, as
7 I mentioned in our, in the testimony, sort of a
8 standard bearer for us as to how committed the
9 commission was and continues to be to implement the
10 protections of the Fair Chance Act, and so we've,
11 we've issued legal enforcement guidance. We
12 underwent rule-making. We, we, um, created new staff
13 positions and brought in experts on the Fair Chance
14 Act and experts with people working with, um, people
15 with criminal, um, legal involvement, um, and so we
16 think we're in a good position to incorporate these
17 new protections. It will take a lot of work and a
18 lot of resources, but we're, we're committing, you
19 know, on the record to put those resources, um, the
20 existing resources that we have to, um, effectively
21 implement, implement this, these new protections if
22 they were to pass.

23 CHAIRPERSON EUGENE: Thank you. I'm
24 going to call on my colleagues for some questions.
25 But before that let me ask you one more question.

2 You mentioned that, you know, certain cases have been
3 resolved. Can you tell us how long those cases took
4 to be resolved? [inaudible] yeah.

5 DEPUTY COMMISSIONER SUSSMAN:

6 Unfortunately I don't have the breakdown of that, of
7 the average length of a case right now. What we do
8 know is that they were filed after the effective date
9 in 2015 and were resolved, um, before this, before
10 the hearing today, so, um, but I can, um, we can look
11 at the case resolutions and map out an average length
12 of, um, of how long they took to resolve, if that
13 would be useful.

14 CHAIRPERSON EUGENE: Thank you very much.

15 Council Member Barron, please.

16 COUNCIL MEMBER BARRON: Thank you, Mr.

17 Chair, and thank you to the panel for coming. We
18 know that New York City has a horrible record of
19 arrests, particularly of black and brown people, ah,
20 because of the way that police conduct their behavior
21 in our communities. So I'm particularly concerned
22 about how we can address those issues. So this is a
23 particularly interesting and impactful bill that
24 we're considering. So we know that the Fair Chance
25 Act is a procedural policy that's been implemented,

2 and it lists those protected categories, and we're
3 now looking to extend what those protections are. Do
4 we know if there are people who are in these
5 categories that we are proposing to be extended who
6 were in fact not allowed to go forward with their
7 case because when they brought their case it was not
8 a part of these protections? Do we have any idea of
9 the number of people who were turned away because you
10 said, oh, we're sorry, it's not included in this
11 category.

12 ZOE CHENITZ: Um, thank you for the
13 question. I don't think we have specific numbers,
14 but I can in very broad strokes, um, give you a sense
15 of, of what we think might be indicative of the scope
16 of impact of the bill. So recently, um, on a annual
17 basis the courts in New York City are each year
18 closing, you know, north of 20,000 cases a year and
19 for criminal cases, I mean, it depends on how quickly
20 charges might be dismissed, um, but resolution can be
21 anything from days for a very quick dismissal, months
22 for more simple cases to a little more than a year,
23 um, as the median timeframe. So there's a large
24 number of cases that for some period of up to about a
25 year, um, will be open and for those folks, ah, for

2 their pending case there, there currently is no
3 protection, um, for their current jobs or for their
4 job application. So it's a very, very rough, um,
5 sketch of, of what the scope of impact might be. But
6 I hope it gives you some sense of it.

7 COUNCIL MEMBER BARRON: OK, thank you for
8 that. I think you're talking about what we can
9 expect going into the future, right? Is that what
10 your question? But my question gets to the fact that
11 someone who is in this new category may have come to
12 you and, and brought their case to you and said well,
13 it was an ACD, or I was a youthful offender. Do we
14 have any idea of what that number might be?

15 ZOE CHENITZ: Yeah, again, I don't have
16 specifics on, on how many folks have in the past been
17 turned away, but I can tell you that the, ah, impetus
18 for filling in all of these loopholes is, um,
19 reflective of the experience of our law enforcement
20 bureau...

21 COUNCIL MEMBER BARRON: OK.

22 ZOE CHENITZ: ...and of advocates that we
23 have existing relationships with in terms of what
24 their clients or the members of the public who are
25 coming to us, um, with cases that we couldn't

2 adequately address, or the law didn't adequately
3 address.

4 COUNCIL MEMBER BARRON: OK.

5 ZOE CHENITZ: If I could add just one
6 little clarifying point. I just want to speak to,
7 um, adjournments in contemplation of dismissal, or
8 ACDs, as you referred to. Um, so those actually are,
9 ah, now covered under the city Human Rights Law and
10 that is because of the fact that the city has
11 incorporated by reference into a provision of the
12 law, ah, state protections and, um, effective as of
13 July 11 last year, um, there was an amendment to the
14 state law that we incorporate, um, that did add
15 protections for ACDs. So a very, ah, I think the
16 original version of the bill that was introduced by
17 the Public Advocate did speak directly to ACDs. But
18 in the interim in the time, um, from when it was
19 introduced to this hearing, um, those protections
20 have already been added to the law, which is very
21 significant.

22 COUNCIL MEMBER BARRON: And what are the
23 qualifications of the persons who are conducting the
24 investigations or coming to the resolutions? What
25 are their qualifications?

2 DEPUTY COMMISSIONER SUSSMAN: Um, at, our
3 staff at the law enforcement bureau, um, so most of
4 our investigations are conducted by attorneys, um, so
5 they are civil service title attorneys who, um, we
6 really prioritize hiring people who speak languages
7 that, you know, community members speak, so that we
8 speak now over 30 languages at the commission. I
9 think we're creeping up to about 35 languages at the
10 commission. Um, we prioritize hiring people who have
11 direct service, um, experience so working at, ah, as
12 a public defender, working at, um, a legal services
13 organization, um, working in housing court, um, in
14 the employment bar, representing workers, um, and
15 other contacts. Um, most of our attorneys come with
16 a civil rights background, or if they don't have a
17 professional background in civil rights a real
18 passion for civil and human rights, and so they are,
19 ah, attorneys who, um, we think are highly qualified
20 and dedicated to doing this work. Um, we also have,
21 um, ah, when we were implementing the Fair Chance Act
22 in 2015 we actually hired, um, Paul Keefe, who is
23 here, right over my shoulder, who was, um, at
24 Community Service Society and had been a key member
25 of sort of the advocacy team that, that really fought

2 for the Fair Chance Act over many years, um, and has
3 extensive, ah, work history working with people with
4 criminal legal involvement in the employment space.
5 So, um, those are some of the qualifications in broad
6 strokes.

7 COUNCIL MEMBER BARRON: Thank you. For
8 those persons who are offered a job and take the job,
9 and then get on the job but still feel that they are
10 not treated adequately or fairly based on what it was
11 that their criminal history record had been, what
12 recourse do they have and how do they know what to
13 do, where to go?

14 ZOE CHENITZ: Um, so, so the law and, and
15 this bill are drafted to address adverse actions in
16 the broadest sense. So that can be things such as,
17 ah, failure to promote um, or other, or other
18 conduct. Um, some of the procedural, procedural
19 protections, um, do sort of contemplate like a moment
20 in time where the employer has learned about the, ah,
21 for example a pending case or, or the past conviction
22 and then they're considering a job application. But,
23 again, there, there is room for addressing broadly
24 adverse actions.

2 COUNCIL MEMBER BARRON: And would you
3 direct them to the appropriate office to file those
4 complaints? How would they know where they can go?

5 ZOE CHENITZ: Yes, so I, I would hope
6 that, um, they, they know that they came to the
7 commission in terms of having protections. Again,
8 the Fair Chance Act is, as you mentioned, the
9 procedural protection.

10 COUNCIL MEMBER BARRON: Right,
11 procedural.

12 ZOE CHENITZ: But there are also the,
13 just broadly for certain categories of criminal
14 system involvement, ah, protections against just
15 discrimination.

16 COUNCIL MEMBER BARRON: OK.

17 ZOE CHENITZ: So, yeah. We, we are there
18 for people who have those sorts of claims.

19 COUNCIL MEMBER BARRON: Thank you. Thank
20 you, Mr. Chair.

21 CHAIRPERSON EUGENE: Thank you very much,
22 Council Member Barron. Council Member Dromm, please.

23 COUNCIL MEMBER DROMM: I thank you very
24 much. Um, you know, this issue, um, is one that's of
25 personal importance to me. When I was 16 years old I

2 was arrested for loitering for the purposes of
3 prostitution. That was 1972, um, I was 16 years old,
4 and, um, I was caught in a car with another guy, and
5 they ripped me out of the car. They pulled me into
6 the precinct. They separated us. They kept coming
7 in and out of the room and saying, you know, why were
8 you with that guy? Why were you with that guy? And
9 then one officer suggested that maybe I did it for
10 money. And I said, yeah, I did it for money, because
11 I thought that if I said I did it for money it would
12 be less of an impact than if I said I was actually
13 gay. And that arrest record and, ah, those types of
14 arrests were very, very common, ah, for men, gay men
15 my age. And, and actually it's, it's still occurring
16 here in the City of New York. As of 2009 a friend,
17 Robert Pinter, was arrested for the purposes of
18 loitering, you know, loitering for the purpose of
19 prostitution as well, and he found out that it was a
20 setup by the police and finally his record was
21 expunged and everything, but it was really amazing to
22 find out that even as of 2009 this was still going on
23 here in this city. But the purpose of me saying this
24 is because it haunted me throughout my career. So,
25 um, when I, first got out of college, um, I applied

2 to, um, get a job in an insurance company, right down
3 here as a matter of fact, and they had to bond you.
4 And so when they were in the bonding they would ask
5 you, um, you know, have you ever been arrested, and,
6 um, then they would say have you ever been arrested
7 on morals charges? And I actually lied and I said
8 no, because I was so afraid to answer yes. But I cut
9 out at lunch and I never went back to that job again.
10 That was on the first day. So then I went, um, you
11 know, to apply to the Department of Education for a
12 job and, um, I didn't lie on the application, thank
13 goodness, um, but, um, then I was called down by the
14 Board of Examiners to, because they did the
15 fingerprint check on me and I had to sit and explain
16 to three Board of Examiners people what the charges
17 were about and why it happened. Ah, then when I was
18 running for City Council I had a *Daily News* reporter,
19 um, try to track down the information, um, and then I
20 had to go on New York One News and explain the whole
21 situation to them. So, um, it's always been
22 something that's been with me and, and by the way, by
23 the way, the case was never sealed, as it should have
24 been, you know, and it was never really handled
25 properly. The attorney that we had, because we were

2 very, very poor when I was younger, did a pro bono,
3 and I don't know if he ever did it right, and I don't
4 even really fully 100% remember exactly what happened
5 because of the age that I was at the time that it
6 happened. Um, so it really can have an impact on
7 people's lives. Fortunately for me I kept fighting.
8 And thank goodness I had a mother who was there with
9 me and she kept fighting it. But nevertheless, um,
10 not everybody would be willing to do that or to go
11 through it, or would they say, gee, I should go for a
12 career but I got to get a teaching license, or
13 whatever. Um, because they would just give up and be
14 discouraged thinking that they would never be able
15 to, be able to do that. Um, so I think it's really
16 important, especially as it relates to LGBT people.
17 Not just transgender people, but LGBT people,
18 especially men my age, because these charges were
19 thrown around all the time, and, ah, they've never
20 been cleared. I've asked the governor in a letter
21 to, um, you know, expunge folks like me, in my age
22 group, of their record if that in fact happened to
23 them back in the 1970s. The governor has not
24 responded. I didn't expect him actually to do that.
25 But, um, so that's why having a law like this I think

2 is so really important because we need to prevent
3 this type of discrimination, um, and I just really
4 wanted to say that I hope we pass this very quickly,
5 um, and I just think it's important. Thank you very
6 much.

7 CHAIRPERSON EUGENE: Thank you very much,
8 Council Member Dromm. Thank you. Let me, ah, thank
9 Ms. Dana Sussman and also Zoe Chenitz, I believe.
10 Thank you very much.

11 DEPUTY COMMISSIONER SUSSMAN: Thank you.

12 CHAIRPERSON EUGENE: And I want to thank
13 you also for what you are doing with your colleagues
14 from the commission. This is, I know, this is a
15 wonderful job, but a job that require also a lot of
16 [inaudible], a lot of assistants, and a lot of
17 resources, too. So we will talk about that next
18 time. And I just want to ensure that we in the City
19 Council we are your partners and all of us council
20 members, we are your partners and we're working
21 together and we'll try to do everything that we can
22 do to support you in the job that you are doing.
23 Thank you very much.

24 ZOE CHENITZ: Thank you very much.
25

2 DEPUTY COMMISSIONER SUSSMAN: Thank you.
3 We appreciate your support.

4 CHAIRPERSON EUGENE: Thank you. So we
5 are going to call the next panel. I think is, ah,
6 excuse me if I pronounce your name wrong, but I think
7 that this is Eric Engle. Christopher Navik, OK,
8 Christopher, thank you very much. I was close. Emily
9 Porter Williams. Melissa Alder. Thank you. Thank
10 you very much. Ah, you know, ah, I don't like to do
11 that. For the sake of time we'll have to limit your
12 presentation for three minutes, OK? Thank you very
13 much. Now any one of you can start any time, but
14 please state your name for the record.

15 ERIC ENGLE: Good morning. My name is
16 Eric Engle. I'm a staff attorney at Youth Represent.
17 Thank you, Chair Eugene, and to the committee members
18 and staff, for the opportunity to testify today, and
19 even though he's not here, the leadership of Public
20 Advocate Williams. Um, Youth Represent provides
21 holistic re-entry legal services for court-involved
22 youth. Our mission is to ensure that people affected
23 by the criminal justice system are afforded every
24 mission, ah, sorry, every opportunity to reclaim
25 lives of dignity, self-fulfillment, and engagement in

2 their communities. We provide criminal and civil re-
3 entry legal representation to young people age 24 and
4 under who are involved in the criminal justice system
5 or who are experiencing legal problems because of
6 past involvement in the criminal justice system. Of
7 course, criminal records-based employment
8 discrimination is one of the highest hurdles that our
9 clients face when getting back on their feet after
10 experiencing the criminal justice system. Ah, I
11 would echo the comments from, um, the Commission on
12 Human Rights on the importance of expanding
13 protections for people with pending arrests, and in
14 my testimony I'll focus on the intentional
15 misrepresentation issue that, that members of the
16 commission also spoke about. One of the most common
17 cases we see at Youth Represent is one where an
18 employer alleges a client has intentionally
19 misrepresented their criminal record. One case that
20 comes to mind is a client who applied for a job and
21 disclosed a felony conviction that resulted in him
22 serving time upstate, but forgot to list a low-level
23 Class B marijuana misdemeanor that he pleaded, ah,
24 that he pleaded guilty to on his first court
25 appearance. Our client's job offer was immediately

2 revoked because the client alleged that, ah, because
3 the employer alleged that our client had
4 intentionally misrepresented, um, his record. I
5 think it's really important that the committee, um,
6 before passing the proposed amendments adds the word
7 intentional back into misrepresentation as it's
8 written in the amendment to Section 10, 107-G. I
9 think the impact of that is that it could limit, it
10 will create an easier bar for employers to
11 arbitrarily deny employment to people on the basis of
12 a misrepresentation. Thank you.

13 CHAIRPERSON EUGENE: Thank you so very
14 much, thank you.

15 Good morning. Ah, my name is Christopher
16 McNearny and I'm an attorney with the law firm of
17 Outten and Golden. Thank you to the committee for
18 holding this hearing and for providing the
19 opportunity to testify. For over a decade Outten and
20 Golden has been in the trenches advocating on behalf
21 of individuals unfairly denied employment because of
22 their criminal history, and working to chip away at
23 the steep barriers to re-entry faced by individuals
24 with records. Our firm has litigated numerous class
25 actions brought under New York law specifically

2 protecting against discrimination on the basis of
3 criminal history, and it's for that reason that we're
4 submitting testimony today. I'd like to echo my
5 colleague and skip to what we also view as one of the
6 most important issues here, the issue of intentional
7 misrepresentation. This is an employer defense that
8 is deeply troubling because in our experience an
9 employer typically will not make any effort at all to
10 determine whether an applicant truly misrepresented
11 their criminal history. Rather, the employer will
12 simply compare the information the applicant self-
13 disclosed to the information in the background check,
14 and if it does not perfectly match will make a
15 determination of intentional misrepresentation, and
16 the reality an applicant experiences is very much
17 different, and there are many reasons why an
18 applicant may fail to fully disclose criminal history
19 outside of a supposed desire to mislead the employer.
20 Thus, this inference of intentionality that employers
21 argue is derived simply by comparing what an
22 applicant self-disclosed what a background check
23 revealed is in our view very problematic. Some of
24 the examples which the commission also raised, which
25 I'll touch briefly on, are individuals may not

2 realize that, um, that they actually were convicted
3 of the crime that they pled. They may misremember
4 their older convictions. They may fail to understand
5 the differences between felonies, misdemeanors, or
6 violations. There may be many other reasons, and the
7 employer's actual form asking you to disclose your
8 conviction, it may ask you to go back for your entire
9 history of your entire life, and it may use
10 incredibly confusing information. And this is
11 because employers know that if they can deny you the
12 job for a falsification then the Fair Chance Act does
13 not apply. But if they actually do a fair
14 evaluation, um, they have to actually go through the
15 provisions of the Fair Chance Act. So I'd like to
16 just finish by echoing my colleague by saying it's,
17 we view it as vital to put intentionality back into
18 the provision. We also provided in our comments some
19 other suggestions of how, um, this, this important
20 issue might be addressed. Thank you.

21 CHAIRPERSON EUGENE: Thank you very much.

22 Thank you.

23 Good morning. My name is Emily Ponder-
24 Williams. I am the managing attorney of the Civil
25 Defense Practice at the Neighborhood Defender Service

2 of Harlem, and I want to thank the committee for
3 hearing, ah, this important issue today. I also want
4 to state that I agree wholeheartedly with the issues
5 raised by my colleagues here, and I want to speak a
6 little more specifically about the importance of
7 extending protections in the current Fair Chance Act
8 to those with pending criminal charges. Neighborhood
9 Defender Service of Harlem is a community-based
10 holistic public defense office that provides high-
11 quality legal services to the residents of northern
12 Manhattan. As part of its holistic defense mission,
13 NDS's civil practice provides concurrently with our
14 clients' criminal cases consultations, advocacy, and
15 legal representation to our clients who are facing
16 the collateral consequences of an arrest or a
17 conviction. As Council Member Dromm pointed out
18 earlier, often the harshest sentence associated with
19 an arrest is not a term of incarceration. It is the
20 shadow of an arrest record that follows a person
21 after a single touch with the criminal justice system
22 and saddles them with consequences that linger long
23 after they walk out of the criminal court. When it
24 comes to employment, I want to stress that this
25 sentence is all too often imposed even before the

2 resolution of a case, and a mere arrest routinely
3 results in job suspension, loss, and denial while
4 charges are pending. As a result, NDS clients are
5 forced to make a decision, enter a plea to invoke the
6 employment protections of the city's current Human
7 Rights Law in order to regain their livelihood, or
8 exercise their right to contest the charges against
9 them. For many NDS clients these consequences are
10 automatic, triggered by an arrest. For instance,
11 information about a client's arrest is often
12 transmitted directly to their employer by the city
13 and state licensing and regulatory agencies as soon
14 as it happens, and in many cases it is the employer's
15 practice to automatically suspend our clients while
16 charges are pending despite the nature of those
17 charges. Or a job hunt could be put on hold for
18 months while clients assert their innocence in
19 criminal court because open charges appear on a
20 background check. For these clients there is no such
21 thing as innocent until proven guilty. The fact of a
22 charge is enough to strip them of their ability to
23 support themselves and their family. NDS applauds
24 this committee for considering amendments to these
25 bills, this bill, that would significantly expand

2 protections for people like NDS's clients. In my
3 written testimony I suggest a few key changes that
4 would provide even further, ah, impact for those
5 clients, and I, ah, incorporate what my colleagues
6 have, ah, already spoken about and refer you to my
7 written testimony. Thank you again.

8 CHAIRPERSON EUGENE: Thank you very much.

9 MELISSA ADER: Good morning, Council
10 Member Eugene.

11 CHAIRPERSON EUGENE: Good morning.

12 MELISSA ADER: And thank you for the
13 opportunity to testify today. My name is Melissa
14 Ader and I'm a staff attorney in the Worker Justice
15 Project, which is an initiative of the Legal Aid
16 Society's criminal defense practice. The Legal Aid
17 Society is the primary public defender in New York
18 City and the Worker Justice Project is an initiative
19 that fights employment discrimination faced by people
20 living with criminal records in New York City.
21 First, I want to thank, ah, the committee and I want
22 to express the society's strong support for proposed
23 Intro number 1314-A, which takes important steps to
24 fix unjust inequities in New York City's current
25 criminal record discrimination law. The bill would

2 help give all New Yorkers a meaningful opportunity to
3 work by providing important employment discrimination
4 rights to people with pending criminal cases,
5 conviction subsequent to the start of employment, and
6 [inaudible] violations. I also concur with my
7 colleagues on this panel and I, I especially concur
8 with the testimony by Youth Represent and Outten and
9 Golden regarding the need to put intentional into the
10 law. But I would like to focus on the testimony on
11 another incredibly important change that needs to
12 happen to this bill if it is going to be effective.
13 Specifically, I believe that a seemingly minor and
14 unintentional change to a previously enacted Fair
15 Chance Act exemption will do enormous damage to low-
16 wage workers by removing the protections of the Fair
17 Chance Act from many thousands of people who are
18 currently protected by the act. The issue that I'm
19 focused on today is that proposed 8107 11-A sub F,
20 sub 3. When the Fair Chance Act was enacted in 2015
21 the City Council created a narrow exemption for
22 specific employer actions that were mandated by other
23 background check laws. The proposed bill, however,
24 significantly broadens that exemption to cover all
25 aspects of the hiring process for workers in industry

2 with legally mandated background checks, even those
3 employer action that are not specifically mandated by
4 a background check law. Most of my low-wage clients
5 in the Worker Justice Project will be stripped of
6 their Fair Chance Act rights if this language change
7 is enacted. For example, one of my clients is a
8 certified nurse aide. She lives in Flatbush and she
9 has a misdemeanor record that is almost 20 years old.
10 Her conviction has been reviewed by several
11 government agencies and each government agency has
12 advised private employers that she is cleared to work
13 despite her conviction record. Under the narrow
14 exemption currently in the Fair Chance Act if a
15 government agency tells an employer that my client is
16 cleared to work pursuant to a background check law,
17 but the employer still denies her the job because of
18 the stigma of her record, my client is currently
19 protected by the Fair Chance Act. And indeed I have
20 secured multiple jobs for my clients by informing
21 employers that they violated the Fair Chance Act.
22 However, if the City Council enacts the language in
23 the proposed version of 8107 11-A sub F, sub 3 my
24 client will lose all of her Fair Chance Act rights
25 because she works in an industry with legally

2 mandated background checks. I therefore request that
3 the City Council either maintain the narrow exemption
4 that currently exists in the Fair Chance Act or use
5 language similar to that used by the federal EEOC,
6 which I've included in my written testimony. Thank
7 you very much.

8 CHAIRPERSON EUGENE: Thank you very much.
9 Thank you to all of you. I have your written
10 testimony. I guarantee you I'm going over them
11 because, ah, I see that there are a lot of very
12 [inaudible] and good information for us, and I thank
13 you so very much for what you are doing on behalf of
14 the people who are really facing these types of
15 challenges. Thank you so very much. Thank you. Now
16 we are calling Sergio de la Para or Pava. Thank you.
17 Sheila Mintz.

18 UNIDENTIFIED: [inaudible]

19 CHAIRPERSON EUGENE: OK, thank you very
20 much for your assistance. Estie Conal. Welsh Carina
21 Martinez Alonso. Thank you. Thank you. And again,
22 I want to thank you for your work and for your
23 presentation also. But for the sake of time we'll
24 have to limit your presentation to three minutes.
25 But I will need, we will go over your written

2 testimony, all right? Thank you so very much.

3 Anyone can start. Please mention your name for the
4 record.

5 VASCARINA MARTINEZ ALONSO: Good
6 afternoon. My name is Vascarina Martinez Alonso.
7 This testimony is submitted on behalf Legal Services
8 of New York City. LSNYC welcomes the opportunity to
9 provide commentary on this important addition to the
10 legislation and is thankful for the invitation to
11 make this submission. I'm going to really summarize
12 a lot of my points, but you have my written testimony
13 before you. Legal Services NYC is an anti-poverty
14 organization that seeks justice for low-income New
15 Yorkers as one of the principle law firms for low-
16 income people in New York City. Manhattan Legal
17 Services, is a constituent corporation of Legal
18 Services NYC. Recognizing the need to close the
19 employment gap for low-income New Yorkers, we created
20 the Barriers to Employment Project to improve the job
21 prospects of all New Yorkers. Um, we are here today
22 to testify as to our experiences representing
23 numerous clients, um, with the goal to further expand
24 access and opportunities for gainful employment.
25 While we know that current federal, state, and city

2 laws have expansive protections with regard to people
3 with criminal convictions, um, 1314-A is, um, an
4 important expansion to the law. Um, although the
5 Fair Chance Act has increased many of our clients'
6 ability to keep, um, to get and keep jobs, our
7 clients are still facing discrimination and
8 employment based on their criminal history,
9 protecting applicants by adding limitations to
10 [inaudible] regarding pending arrests, adjournment,
11 ah, ACDs, um, and presealed violations, um, will
12 greatly, um, improve outcomes for the work force. In
13 addition to clarifying the scope of the law, um,
14 1314-A would also, um, add steps to the Fair Chance
15 Act process, requiring an employer to affirmatively
16 request an applicant's or employee's information
17 relating to the Fair Chance Act factors before, um,
18 an employer does their analysis. So in this way it
19 gives, um, our clients two opportunities to put their
20 best foot forth. Additionally, it enables applicants
21 and employees to better be prepared to respond to the
22 Fair Chance Act notice. In our experience, clients
23 are very confused as to how to response to these
24 notices and often miss the very short timeframe of
25 three days to be able to answer. Given vulnerable

2 New Yorkers' interactions with law enforcement, 1314
3 not only limits, um, criminal record discrimination,
4 but also limits discrimination on the basis on race.

5 It's no secret that in New York City black and Latino
6 people are disproportionately policed and therefore
7 disproportionately disadvantaged in terms of seeking
8 employment. Um, there's a bunch of statistics in my
9 written testimony that I'll spare you about today.

10 Um, although New York City has protections for people
11 with criminal conviction histories and employment,
12 not all New Yorkers who interact with law enforcement
13 are protected under these laws, which is why we're
14 here today. Understanding the racial ramifications
15 of policing and employment limitations on the basis
16 of arrest, um, are, and they're, um, beyond New
17 Yorkers' ability to remain outside of the criminal
18 justice system. Just because somebody wasn't
19 convicted by law enforcement doesn't mean that they
20 weren't convicted to poverty by their inability to
21 get jobs. Black New Yorkers are still, um, have the
22 highest unemployment rate in New York City and
23 they're also disproportionately over-policed.

24 Statistics are also, which are also presented in my
25 written testimony. Um, in practice the consequences

2 of policing in New York City means that while
3 unemployment rates have fallen that's not the case
4 for black, um, men in New York City. Um, 1314 would
5 continue to expand our present and future clients'
6 abilities to, oh, I'll just summarize briefly. Um,
7 ah, youth in our city are already disproportionately
8 targeted by police, but today you can stop similarly
9 disproportionately disenfranchising stigma of their
10 experiences by enabling New Yorkers to further expand
11 opportunities to acquire and preserve employment.
12 Thank you for allowing us to present this testimony
13 today.

14 CHAIRPERSON EUGENE: Thank you very much.
15 Thank you.

16 ESTIE CONNOR: Good morning, my name is
17 Estie Connor.

18 CHAIRPERSON EUGENE: Good morning.

19 ESTIE CONNOR: I'm a senior staff
20 attorney with the Community Service Society of New
21 York, or CSS. The CSS legal department, along with
22 our Next Door Project, provides legal services,
23 advocacy, and rap sheet services to New Yorkers who
24 have had contact with the criminal punishment system.
25 I'd like to thank the committee for the opportunity

2 to testify at today's hearing. Um, in my written
3 testimony I provided detailed comments about CSS's
4 support for Intro 1314-A as well as few issues that
5 CSS is concerned about, or some corrections that need
6 to be made. I have detailed those, um, in my written
7 testimony so during my oral testimony today I'll
8 highlight just a few issues that are particularly
9 important to CSS and our clients. First, I would
10 like to state that CSS strongly supports Intro 1314-A
11 in general. We strongly support the expansion of
12 employment protections being provided to New Yorkers
13 who have had contact with the criminal punishment
14 system, especially protections provided to New
15 Yorkers who have a pending arrest at the time of
16 application for employment, New Yorkers who have a
17 pending arrest or conviction during their time of
18 employment, as well as New Yorkers who have cases
19 that have been adjourned in contemplation of
20 dismissal, cases that have been sealed, and cases
21 that have been adjudicated as a youthful offender
22 case. So CSS generally strongly supports the
23 legislation, but I would like to echo some of the
24 concerns that were raised during the previous panel
25 by my colleagues at other advocacy organizations.

2 First, on the issue regarding applicant
3 misrepresentations CSS wholeheartedly echoes the
4 concerns raised by my colleagues that it is important
5 that the legislation be amended or corrected. We
6 believe that there is an inadvertent error that left
7 the word intentional out of the legislation, so every
8 place where the term misrepresentation is used, the
9 term intentional should be added. In addition, I'd
10 also like to address a concern that CSS has with the
11 fair chance factors that are included in the proposed
12 legislation. CSS supports the proposed legislation's
13 application of fair chance factors to situations not
14 addressed by Correction Law Article 23-A. But in
15 situations where a pending arrest is involved, CSS
16 suggests eliminating evidence of rehabilitation or
17 good conduct as a relevant fair chance factor. Our
18 concern with this, our concern regarding this issue
19 is that employee submissions and discussions with
20 employers regarding evidence of rehabilitation or
21 good conduct could involve employees providing
22 statements to their employers regarding their pending
23 case, the circumstances surrounding their arrest, or
24 their self-perception of their own culpability in the
25 relevant incident. That is problematic because it

2 not only undermines the presumption of innocence
3 afford to individuals who have been accused of a
4 crime, but it could result in employees making
5 statements to their employers regarding their pending
6 cases. So for that reason we, we urge the council to
7 be very cautious on this issue, on this issue. Once
8 again, thank you so much for the opportunity to
9 testify and thank you for your time.

10 CHAIRPERSON EUGENE: Thank you very much,
11 thank you.

12 SHALI SHAMIZA: Thank you. Good morning,
13 my name is Shali Shamiza and I'm a staff attorney in
14 the employment law unit at Brooklyn Defender
15 Services. I want to thank the New York City Council
16 Committee on Civil and Human Rights, particularly
17 Chair Eugene, for the opportunity to testify today.
18 BDS's employment practice provides legal
19 representation and advocacy to people facing
20 employment discrimination due to current or prior
21 contact with the criminal justice system. We have
22 represented number clients who have lost or have been
23 completely excluded from employment opportunities due
24 to current or prior criminal justice involvement.
25 BDS supports Intro 1314-A, which would amend the

2 administrative code of the City of New York in
3 relationship to prohibiting discrimination based on
4 one's arrest record, pending criminal accusations, or
5 criminal convictions. Many BDS clients are suspended
6 or terminated from their current employment merely
7 because of an arrest. I would like to share one
8 client's story today. Ms. H worked as a home health
9 aide caring for elderly individuals, a position she
10 held for nearly eight years. She was arrested while
11 physically defending herself from a sibling.

12 Although she did not have a prior criminal history,
13 as a result of the arrest Ms. H was suspended from
14 her job without pay or benefits. At the time she was
15 the sole financial provider for her children. It
16 took nearly two months for her case to resolve and
17 every day she worried about losing her home and
18 providing for her children. No court ever found Ms.
19 H guilty of a crime. But her story illustrates how a
20 person's life can be thrown into turmoil without any
21 finding of criminal culpability. It is also critical
22 to mention that Ms. H is a woman of color, and as
23 many have acknowledged here today, persons of color
24 are disproportionately harmed by the collateral
25 consequences of an arrest. Allowing the racial

2 inequalities of our criminal justice system to
3 permeate into the employment context further stifles
4 economic opportunities for low-income communities of
5 color. Removing these barriers to hiring, licensing,
6 and continued employment will help ensure that New
7 Yorkers who rely on employment income will not fall
8 behind on rent, car payments, and countless other
9 financial obligations solely because of favorably
10 resolved contact with the criminal justice system.
11 Thank you for your time and consideration of my
12 comments.

13 CHAIRPERSON EUGENE: Thank you very much.

14 SERGIO DE LA PAVA: Thank you very much.

15 My name is Sergio De La Pava. I'm the legal director
16 at New York County Defender Services, a public
17 defender office here in Manhattan. In that capacity
18 we represent about 15,000 a clients a year, indigent
19 people accused of crimes. Now, to put all this in
20 context, in 2018 New York City, the NYPD arrested
21 about 250,000 people, and about 109,000, or 43% of
22 those cases, resulted in either a disposition to a
23 violation or an ACD. So we certainly support Intro
24 1314, which would provide greater protection for that
25 astounding number of people who do, who do have these

2 dispositions and find it adversely affecting their
3 employment. I did want to take the opportunity to
4 talk about a related area. Since we're talking about
5 the need to protect people from employment
6 discrimination, you know, for over two years, ah, New
7 York has had its first-ever sealing statute, Criminal
8 Procedure Law 160.59, which went into effect on
9 October 1 of 2017. This does give some people the
10 ability to move the court for sealing of past
11 convictions, which is obviously a critical matter
12 that we find constantly interferes with our clients'
13 employment possibilities. The Office of Court
14 Administration estimates that there's about 600,000
15 people currently eligible for relief under this
16 statute, and yet they've received less than 1% of
17 those in applications. Now, when this statute was
18 passed, unfortunately no resources were really
19 devoted towards educating the public about this vital
20 new right. Um, we at New York County Defenders
21 Services are very interested in spreading the word to
22 our clients and to our client communities, but we
23 need help in doing that and I'm asking that the City
24 Council take this opportunity to provide some
25 leadership in this area, about getting the word out

2 about this sealing statute that is severely under-
3 utilized and that I think could go a long way towards
4 preventing the kind of employment discrimination that
5 is the subject of today's hearing. So thank you very
6 much for this opportunity to highlight that.

7 CHAIRPERSON EUGENE: Thank you very much,
8 thank you. And to all of you, thank you so much for
9 what you are doing and thank you for your
10 presentation also. Thank you. Now we are calling
11 Annie Garniva, Annie, thank you very much, and Jared
12 Trujillo, thank you very much. You may start,
13 please. Mention your name for the record.

14 ANNIE GARNIVA: Hi, my name is Annie
15 Garniva. Um, I am the director of communications and
16 member services at the New York City Employment
17 Training Coalition. Thank you so much, Council
18 Member Eugene and the rest of the council for having
19 this hearing. Ah, New York City Employment Training
20 Coalition supports the work force development
21 community to ensure that every New Yorker has access
22 to the skills, training, and education needed to
23 thrive in a local economy and every business is able
24 to maintain a highly skilled work force. With over
25 175 members who provide these kinds of social

2 services we represent community-based organizations,
3 educational institutions, and labor management
4 organizations who regularly support New Yorkers in
5 their quest to get a strong career and job
6 opportunities. Today NYCETC is here on behalf of our
7 member organizations who provide career services to
8 people with justice involvement. Those include
9 Strive, the Osborne Association, Fortune Society, and
10 many, many others. Approximately a quarter of
11 clients that access the work force development system
12 in the city have been impacted by the justice system
13 in one way or another. Our members say that this is
14 one of the largest barriers to employment faced by
15 their clients and making this legislation and
16 increased investments and targeted programs and
17 services for these New Yorkers all the more
18 important. Our testimony today will be brief and to
19 the point. We're proud to support the legislation
20 proposed by the public advocate as well as the
21 council. Our members have made it clear to us that
22 the Fair Chance Act, which is the existing
23 legislation, is an important aid to them in their
24 efforts to help justice-involved individuals achieve
25 gainful employment. They have told us that while the

2 Fair Chance Act has been helpful in supporting
3 individuals with convictions, the complexity of the
4 justice system, the sheer volume of New Yorkers that
5 have been impacted by it, but not necessarily
6 convicted, and the bias that exists towards anyone
7 that has had any involvement with the system at any
8 point in time means that this proposed expansion to
9 cover all New Yorkers is critical in closing some
10 loopholes for discrimination. As we said in our
11 support for the Fair Chance Act before it became law,
12 discrimination against New Yorkers on the basis of
13 conviction is still discrimination and our city
14 should be working to help formerly incarcerated
15 individuals find employment. Um, the same is true
16 for justice-involved individuals that would be
17 covered by this legislation with a variety of, ah,
18 pending cases and ADIs. In addition to offering
19 legal protection, passing this bill will also help
20 businesses find more qualified talent than they have
21 in the past. Additionally, as several people have
22 pointed out so far, based on our members' experience
23 in supporting individuals with justice involvement,
24 we have found that the three-day window that people
25 have referenced so far that was initially meant to be

2 empowering to individuals in fact keeps them from
3 accessing a lot of these jobs, um, because oftentimes
4 individuals either do not have their documents ready
5 to hand over to an employer, so we suggest that
6 either that window of time be expanded or support
7 services be grown to organizations to be able to help
8 individuals prepare their documents prior to that
9 moment in time. Thank you.

10 CHAIRPERSON EUGENE: Thank you very much.
11 Mr. Trujillo.

12 JARED TRUJILLO: Ah, good morning. Thank
13 you, Chairman Eugene and to the entire committee, ah,
14 for allowing us to speak on this. My name is Jared
15 Trujillo. I am the president of the Association of
16 Legal Aid Attorneys, UAW Local 2325. We're a union
17 of about 1500 people. We are, we're lawyers, ah,
18 we're social workers, we're paralegals, we're other
19 advocates, and we really do a lot of the public
20 defense work and immigration work, ah, and juvenile
21 defense work, ah, that really uplifts and elevates a
22 lot of low-income folks in New York. In addition,
23 we're also a coalition member of the Decrim NY
24 Coalition, which is a group of about 30 groups that
25 works to empower and uplift and elevate sex workers.

2 Um, a lot of folks today have already talked about
3 all of the substantial benefits of Intro 1314. Ah, I
4 want to talk about specifically how it would impact
5 people that have unsealable violations for Penal Law
6 24037, which is loitering for the purpose of
7 prostitution. Um, now Council Member Danny Dromm
8 briefly spoke about how his, ah, violation under
9 24037 has impacted his career, even though his
10 violation is from the 1970s. Um, that's the case for
11 a lot of people in New York. Penal Law 24037, while
12 it has prostitution attached to the title, it's not a
13 prostitution-related offense. It's not even found
14 within the same part of the penal law as the other
15 prostitution-related offenses. People arrested under
16 24037 are oftentimes just existing. They're 94%
17 women of color. They're disproportionately
18 transgender or gender nonconforming folks and they're
19 waiting, ah, they're smoking a cigarette, they're
20 waiting for a friend outside of the club, ah, they're
21 hailing down a cab. Oftentimes police look at how a
22 woman is dressed or how a person is dressed in
23 determining who to arrest under the statute. In a
24 2016 Legal Aid lawsuit to try to invalidate this
25 statute, an officer admitted under deposition that he

2 looked for women with Adam's apples when determining
3 how to arrest under this statute. However, this is
4 still, 24037 is still a violation, meaning that it's
5 not even a misdemeanor, and yet because it's
6 unsealable it can affect someone's ability to get a
7 job for the rest of their lives. Um, this is deeply
8 concerning, not, not only for people that weren't
9 even involved in any prostitution-related activity,
10 ah, but it's deeply concerning because the people
11 that are often picked up for, under this statute are
12 the most marginalized folks that already have
13 substantial barriers to entering the job market. And
14 so Intro 1314 because, ah, because of how it would
15 enable people with unsealed violations to be treated,
16 it would only help them overcome some of those
17 barriers. Additionally, people that actually, sorry,
18 that are involved in the sex trade, um, that want to
19 leave the sex trade, ah, by preventing this barrier
20 to them leaving, ah, that would only help them. And
21 finally, I see my time is over, um, I, I would also
22 echo what other folks have talked about today, um, as
23 far as right now while Intro 1314 is incredibly
24 important, it still would enable employers to inquire
25 about the violation and we are asking that, ah, that

2 it be amended so they can't inquire either. Thank
3 you.

4 CHAIRPERSON EUGENE: Thank you very much.
5 Thank you to both of you. But before you leave I've
6 got only one question for Miss Annie. I think that
7 you stated that three days is too short to respond to
8 an employer. Ah, how long it should be according to,
9 you know, to yourself?

10 ANNIE GARNIVA: I, we have not discussed
11 this with our members so I don't know, but generally
12 three days, um, people don't even, they have to
13 gather several documents, so, um, I would say you
14 should ask CBOs that have direct, um, contact with
15 individuals, and the Legal Aid Society has developed
16 best practices to be able to prepare documents in
17 advance, so I would not, I would not want to give a
18 recommendation that isn't based on actual people on
19 the ground who are having this experience. So we're
20 happy to do that research for you, for sure.

21 CHAIRPERSON EUGENE: Thank you very much.
22 Thank you to both of you, and thank you for what you
23 are doing for the New Yorkers. Thank you. And to
24 all of you here, thank you for your attendance and
25 thank you also for your interest on these very, very

2 important issues, and thank you for what you are
3 doing through your organizations. I know that many
4 of you are members of organizations in your working.
5 This is a team work, as a matter of fact, when we
6 work on behalf of the New Yorkers who should
7 collaborate and unite and work together to make sure
8 that we make New York City a better place for all,
9 and I commend you for your work. Thank you very
10 much. Have a nice day. God bless you. Thank you.
11 With this, the meeting is adjourned. [gavel]

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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 January 26, 2020