



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

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Presented before

The New York City Council Committee on Public Safety

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

October 16, 2017

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

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

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

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

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

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

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

Based on our experience, it is likely that more errors are recorded, day by day, than fixed. Moreover, the problem of RAP sheet inaccuracies and incomplete entries had already been

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

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

Additional recommendations:

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

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

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

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

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

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

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

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

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

Our criminal defense attorneys report that nearly every client arrested on this charge is carrying a knife for work. Often, they are maintenance workers, stock room attendants, or other types of laborers. Unfortunately, many cannot obtain verification of their employment because their work

is unsteady or informal. The vast majority of BDS clients charged with the relevant offense are Black and/or Hispanic—approximately 86%. Case dispositions vary from client to client, but all are deeply impacted. They suffer the trauma of arrest and contact with the system, including overnight detention in a filthy holding cell and the humiliation of being churned through arraignments and, very often, allocution to a plea deal involving an admission of guilt. They can also lose their jobs and their children, and even face deportation because of these arrests. The criminalization of simple possession of work tools further poisons the relationship between law enforcement and the community and expands the dragnet of our criminal justice system, all without any public safety interest.

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

Client stories:

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

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

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

Mr. S, a 33 year-old maintenance worker at Brightside Academy, an early childhood education center, was arrested and charged with gravity knife possession and low-level marijuana

possession. Prosecutors insisted on Misdemeanors for both charges and Mr. S lost his job after the school received a letter informing them that he was charged with “possessing a weapon/firearm.” After repeated requests to the Kings County District Attorney’s office, we were able to test the knife and found it to be a locking folding knife and not a gravity knife. Prosecutors then agreed to dismiss the case, and the client successfully sued for malicious prosecution and unlawful seizure, but his employer would not rehire him.

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

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

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

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

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

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

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