



CHIEF DEFENDERS ASSOCIATION OF NEW YORK

MEMORANDUM IN SUPPORT

A6045 (Weprin)/S3995 (Serrano)

January 22, 2019

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The Chief Defenders Association of New York ("CDANY") is a membership organization of the appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices and Administrators of Assigned Counsel Panels throughout New York State. Our organizations collectively represent the vast majority of people prosecuted in every county of New York State—hundreds of thousands of people each year. Collectively, public defense offices represent close to 400,000 people in the criminal, family, and appellate courts of New York State every year.

CDANY strongly supports A6045 (Weprin)/S3995 (Serrano), which would prohibit employment discrimination on the basis of a criminal case that has been adjourned in contemplation of dismissal. Reducing the barriers that prevent people with arrest records from working is essential to creating a fairer New York. A necessary step to achieving that goal is to protect from discrimination those workers whose cases are ordered adjourned in contemplation of dismissal.

An adjournment in contemplation of dismissal ("ACD") is a court order that schedules the dismissal of a criminal case. An ACD is not a conviction, plea agreement, or admission of guilt. Instead, the defendant, prosecutor, and judge agree that the case will be dismissed on a set date unless the defendant is rearrested or violates a court-ordered condition. A review of tens of thousands of ACD'd cases in New York City indicates that 99.4 percent of ACDs result in dismissal.¹

EXISTING LAW

Pursuant to Executive Law § 296(16), once an ACD'd case been dismissed, the case cannot be used as a basis for discrimination in employment, licensing, or the providing of credit or insurance. However, the ACD process typically involves a six-month to one-year waiting period between the ACD order and the final dismissal. In this intervening time period, workers have no protections from discrimination on the basis of their criminal case. Because of this lack of protection, New Yorkers are fired, suspended from work indefinitely, and not hired on the basis of the ACD'd case, even though the case has been scheduled for dismissal. As with every aspect of the criminal legal system, discrimination based on ACDs disproportionately impacts racially and economically marginalized people, particularly Black and Latinx people.

PROPOSED CHANGE

A6045 (Weprin)/S3995 (Serrano) would protect workers from discrimination as soon as the ACD order is issued. Most importantly, after an ACD order is issued, employers will be prohibited from using the arrest or prosecution as a basis for denying employment or firing the worker, and will be required to lift any suspension imposed because of the arrest or prosecution. The changes would further make clear that no person shall be required to divulge information regarding an arrest that resulted in an ACD. Similar to existing law, the proposed protections would not apply to firearm licensing or to applications for employment as a police officer or peace officer. Further, the protections also would not apply in the very rare instance that an ACD is revoked and no longer in effect, and the criminal case is restored to the calendar for further prosecution.

JUSTIFICATION

In 2017, almost 80,000 cases in New York State were dismissed after an ACD. This represented nearly one-fifth of all case dispositions that year. Behind convictions, dismissal following an ACD was the most common type of case disposition in 2017.ⁱⁱ This bill would therefore affect a significant population of workers who are currently prevented from fully participating in society. We urge the legislature to pass A6045 (Weprin)/S3995 (Serrano) so that this large number of New Yorkers can work and support their families after their criminal case has been scheduled for dismissal.

ⁱ Data on file with The Legal Aid Society.

ⁱⁱ N.Y. State Div. of Crim. Just. Servs., *2013-2017 Dispositions of Adult Arrests – New York State*, available at <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf>.