



CENTER FOR COMMUNITY ALTERNATIVES
INNOVATIVE SOLUTIONS FOR JUSTICE

A REPORT TO THE
ALLIANCE OF COMMUNITIES
TRANSFORMING SYRACUSE (ACTS)

*The Use of CHAIRS Reports as
Criminal Background Checks*

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EXECUTIVE SUMMARY

The Onondaga County Sheriff's Department has long been promoting the use of the "CHAIRS" report as a "criminal background" record. In Onondaga County, use of these reports has become ubiquitous, and many employers, volunteer organizations, and landlords use the CHAIRS reports to screen applicants for jobs, volunteer opportunities, and housing. The CHAIRS report, however, does not contain complete information about a person's criminal history. Rather, it contains only a list of a person's arrests in Onondaga County without any information about whether or not the arrest actually resulted in a criminal conviction.

The Alliance of Communities Transforming Syracuse ("ACTS") has consistently questioned the legality and wisdom of using such incomplete reports to screen applicants. ACTS is concerned that the CHAIRS reports are being used to improperly deny deserving and qualified people employment, housing and community service opportunities and thus undermining public safety. After hearing many stories of arrests listed on the CHAIRS reports that should never have been there in the first place, ACTS has also questioned the accuracy of these reports. In response, ACTS asked the Center for Community Alternatives (CCA) to conduct a study to evaluate the types of mistakes that occur on the CHAIRS reports and to determine how common such mistakes are.

CCA's study reveals that a significant majority of CHAIRS reports includes information about one or more arrests that is protected from disclosure by New York's sealing statutes, Human Rights Law, and the Fair Credit Reporting Act. More specifically, CCA's study found that:

- *64.3% of the CHAIRS reports reviewed contained at least one arrest that should not be disclosed under New York's Criminal Procedure Law.*
- *90% of the CHAIRS reports reviewed contained at least one arrest that should not be disclosed under New York's Fair Credit Reporting Act.*
- *Because there are so many arrests mistakenly listed on the CHAIRS report, those employers who use such reports as a criminal background checks are at significant risk of committing an unlawful discriminatory practice.*

This study does not merely show that ACTS was justified in identifying mistakes as a grave problem with public disclosure of the CHAIRS reports, but that ACTS had initially underestimated the degree and gravity of the problem. Now that we know more about how prevalent mistakes are in CHAIRS reports, it is hard to justify continued public disclosure of such an error-ridden document.

INTRODUCTION

Employers, volunteer organizations, and landlords throughout Onondaga County commonly use what is known as the “CHAIRS” report to screen employment, volunteer, and housing applicants. This practice started more than two decades ago when the Onondaga County Sheriff’s Department began promoting use of the CHAIRS report as a “criminal background” record to be used by employers, volunteer agencies, and landlords. But what employers, volunteer agencies, and landlords do not know is that the CHAIRS report is not an official criminal history report; rather, it simply is a list of all of a person’s arrests in Onondaga County. The report does not include any information about whether or not these arrests resulted in a criminal conviction, a non-criminal conviction, or a dismissal. Moreover, employers, volunteer agencies, and landlords also are not told that the CHAIRS reports often include information that, under New York law, should be sealed and not publicly disclosed.

Both the legality and public safety benefits of using the CHAIRS reports for background screening was called into question in November 2009 when the Alliance of Communities Transforming Syracuse (ACTS) identified public disclosure of the CHAIRS reports as one of its action items. ACTS members have met with Onondaga County officials, including Onondaga County Sheriff Kevin Walsh, to discuss the legal and policy problems with publicly disseminating arrest records. In early December 2009, ACTS collaborated with the Onondaga County Reentry Task Force to meet with the Onondaga County Legislature’s Public Safety Committee to identify the many problems associated with public disclosure of the CHAIRS reports. This meeting generated an in-depth December 9, 2009 article in the *Syracuse Post Standard* and a December 11, 2009 editorial by the *Post Standard’s* Editorial Board calling for the Onondaga County Sheriff’s Department to discontinue the practice of disclosing CHAIRS reports to be used as criminal background checks.

One of the many complaints against the CHAIRS reports is that these reports are replete with mistakes and often include arrest information that should be sealed under New York law. An example of this kind of mistake was discussed in the December 9, 2009 *Post Standard* article. This article described how Lisa Parlato, a retired New York State Trooper, had initially been denied a volunteer opportunity to mentor a student because she had a 1976 misdemeanor arrest listed on her CHAIRS report. It turns out that this arrest resulted in a dismissal and was sealed, and thus, never should have appeared on the CHAIRS report. Because the court file has since been lost or destroyed, Ms. Parlato has not been able to obtain the documentation she needs to correct this mistake, and the arrest continues to appear on her record in violation of New York State law.

Ms. Parlato’s situation gives rise to important questions about the CHAIRS reports: How often do mistakes occur? What other types of mistakes occur on these records? To answer these questions, ACTS requested that the Center for Community Alternatives (CCA) conduct a study to evaluate the types of mistakes that occur on the CHAIRS reports and determine how common

these mistakes are. ACTS turned to CCA because of our unique qualifications to conduct such a study. For years CCA's Reentry Clinic has been assisting people who have had contact with the criminal justice system to restore many of their civic participation rights, including the right to work, to volunteer, and to vote. CCA's Reentry Clinic has done so through an array of services, including assistance in identifying and correcting mistakes on their criminal records. In addition, CCA's Justice Strategies division provides criminal justice research, training, public advocacy, and policy development to strengthen the community's understanding of criminal and juvenile justice issues and to enhance the quality of decision making and public dialogue concerning justice policies. This study was a joint project of CCA's Reentry Clinic and Justice Strategies staff. As discussed further, our study reveals that CHAIRS reports contain errors at disturbingly significant rates.

CCA's study reveals that CHAIRS reports frequently contain information about arrests that, under various provisions of New York State law, should not to be disclosed publicly or to employers. Indeed, a significant majority of CHAIRS reports includes information about one or more arrests that is protected from disclosure by New York's sealing statutes, Human Rights Law, and Fair Credit Reporting Act.

A brief overview of how the CHAIRS system started and the laws that are implicated by public disclosure of the CHAIRS reports is helpful in understanding this report.

Background of the CHAIRS Report

CHAIRS is an acronym for "Criminal History Arrest Incident Reporting System." Initiated more than three decades ago as a law enforcement tool, the CHAIRS system calls upon the various law enforcement agencies in Onondaga County to enter arrest information into a shared database. ACTS does not oppose use of the CHAIRS system as a tool for law enforcement officers to share information with each other. However, some time after implementing the CHAIRS system, the Sheriff's Department began to make CHAIRS reports available to employers, volunteer organizations, and landlords for a \$10 fee, promoting use of these reports

on its website as criminal “background checks.”¹ The CHAIRS report contains a list of all arrests a person has had in Onondaga County, though it contains no information about the disposition (or result) of these arrests. The CHAIRS report includes not only arrests for criminal offenses (that is, misdemeanors and felonies), but also arrests for a variety of non-criminal activities, including: traffic infractions; non-criminal infractions such as disorderly conduct or open container violations; arrests on warrants; and arrests for technical violations of probation or parole.

This means that one relatively minor contact with the criminal justice system can result in several entries on the CHAIRS report, including not only the original arrest for the offense, but any resulting arrests for failing to appear for a scheduled court appearance or violating the conditions of court-imposed supervision. It is not uncommon for a person to have a relatively minor record, including no criminal convictions or only one misdemeanor conviction, but to have a lengthy CHAIRS report because it includes non-criminal arrests and erroneously listed arrests.²

Use of CHAIRS reports in Onondaga County has become ubiquitous. Many non-profit organizations use the CHAIRS report as a regular part of their hiring practices, and private employers typically require job candidates to bring the CHAIRS report to their job interviews. Failure to do so means that the person will not be hired. Many job applicants do not fully understand their rights when looking for a job and do not know that they are not required to disclose information about arrests that did not lead to a criminal conviction. Those who know of their rights, but who need employment or housing, do not feel that they can run the risk of losing a critical opportunity by refusing to disclose their CHAIRS report, even if they recognize that the report contains mistakes. Finally, many people have tried to correct mistakes on their CHAIRS records but have been unable to do so either because the process for correcting mistakes is not apparent or because, as in Lisa Parlato’s situation, the documents needed to correct the mistakes have been lost or destroyed.

¹ This fee is waived for non-profit organizations. Notably, landlords and employers often do not pay this fee themselves. Rather, they often mandate, as part of the application process, that the applicant must purchase the CHAIRS report and then re-disclose it to the employer or landlord.

² Since there is general agreement that African Americans and Hispanics are disproportionately arrested at higher rates than their white counter-parts, they undoubtedly will disproportionately suffer the ill effects of public disclosure of CHAIRS reports. Our study, however, did not evaluate the extent to which public disclosure of CHAIRS reports disproportionately affects communities of color.

An Overview of New York Laws Implicated by Public Disclosure of CHAIRS Reports

For decades, New York law and public policy have promoted public safety and fundamental fairness by encouraging the employment and licensure of people with a criminal history. See i.e., Correction Law § 752, § 753. Indeed, in 1976, then-Governor Hugh Carey signed into law legislation designed to protect people with a criminal record from automatically being denied a job solely on the basis of their criminal conviction history. In doing so, he emphasized the public safety and human rights benefits of this legislation:

*Providing a former offender a fair opportunity for a job
is a matter of basic human fairness, as well as one of the
surest ways to reduce crime.*

- Governor Hugh Carey, Memorandum approving Law of
1976, chapter 931.

There are several mechanisms in New York law designed to promote this public policy, including sealing provisions found in New York’s Criminal Procedure Law as well as policies regarding hiring practices found in New York’s Human Rights Law and Fair Credit Reporting Act. Because an overview of these provisions is a prerequisite to understanding the scope of errors commonly contained in CHAIRS reports, these provisions are described in more detail below.

New York’s Sealing Provisions

In New York, sealing provisions help to protect the rights of those who have been arrested but who have not been convicted of a criminal offense as well as those who were arrested for an offense which occurred prior to their 19th birthday. There are three different types of sealing provisions:

- **Criminal Procedure Law (CPL) §160.50** seals the arrest information of those whose arrest resulted in a disposition favorable to them, including a dismissal, an Adjournment in Contemplation of a Dismissal (which is commonly called an ACD and which means an arrest will be dismissed after a set period of time, usually six months, as long as the defendant does not get into further trouble with the law), or a “not guilty” verdict after trial. In addition, convictions for unlawful possession of marijuana (which is classified as a violation, or a non-criminal offense) generally can be sealed under CPL § 160.50(3)(k) three years after the arrest. CPL § 160.50 is generally not available for an arrest that was disposed of by a guilty plea to another pending arrest, a disposition often referred to as “covered” by another case. Thus, these “covered” arrests that have not led to convictions are generally not sealed even though they did not lead to a conviction.

- **Criminal Procedure Law (CPL) §160.55** is intended to seal violation convictions, which under New York law are classified as non-criminal offenses.³ Courts throughout the State differ in their interpretation of CPL § 160.55. The courts in approximately half of New York's counties seal all violation convictions except those explicitly excepted under the statute itself, while the courts in the other half of New York counties only seal violation convictions that result from an arrest for a felony or misdemeanor, but not those that result from an arrest for a violation arrest. In the counties that follow the latter rule, a person who is arrested for a misdemeanor or felony but who is able to negotiate for a plea to a non-criminal violation conviction is in a much better position than a person who is arrested for the less-serious, non-criminal violation at the outset. Onondaga County follows this latter rule, notwithstanding its rather odd and seemingly unfair results.

- **Youthful Offender Sealing under CPL § 720.35:** In New York, a person who is 16 years or older is considered an adult for purposes of our criminal justice system, as are some 13, 14, and 15 year olds arrested for more serious criminal offenses. To protect such individuals from the life-long stigma of a criminal conviction, New York law gives judges the discretion to adjudicate as a Youthful Offender a young person who had not yet reached the age of 19 at the time of the crime. In some instances, this Youthful Offender adjudication is mandatory. A Youthful Offender adjudication means that the conviction is vacated and the arrest is deemed confidential and sealed under the Youthful Offender statute, CPL § 720.35.

These sealing provisions work in conjunction with New York's Human Rights Law.⁴

New York's Human Rights Law

New York's Human Rights Law (found in Executive Law § 296) protects vulnerable populations in New York, including those who have a history of contacts with the criminal justice system, from certain discriminatory policies. Subsection 15 of the law provides that employers can not maintain a blanket policy against hiring a person with a criminal record, but can refuse to hire such individuals only if their conviction is directly related to the specific job duties or hiring the individual would create an unreasonable and significant risk to the safety of people and property.

³ In CPL § 160.55, there are two types of violations that do not get the benefit of this sealing: a conviction for driving while ability impaired and a conviction for loitering for the purposes of prostitution.

⁴ There is a fourth recently-enacted sealing provision, CPL § 160.58, which allows for the sealing of drug-related convictions for those who participated in a judicial sanctioned or district attorney sponsored treatment program and who have completed their imposed sentences. However, because this sealing provision is so new, there has only been one such sealing in Onondaga County. This was not accurately reflected on the individual's CHAIRS report even after the sealing information was properly conveyed to the Sheriff's Department. Nonetheless, because this provision is so new, we did not include this in our evaluation.

Subsection 16 makes it an *unlawful discriminatory practice* for an employer to consider, ask about, or require disclosure of an arrest that has been sealed pursuant to one of the sealing statutes described above. Employers may only consider pending arrests and arrests that resulted in a criminal conviction (that is, a conviction for a misdemeanor or a felony). If an employer asks a job candidate to disclose his CHAIRS report, and that report erroneously includes a sealed arrest, the employer has violated the Human Rights Law by requiring disclosure of an arrest that has been sealed.

Those employers who require job candidates to bring their CHAIRS reports to an interview are unwittingly committing an unlawful discriminatory practice under New York law if the report contains an arrest that otherwise has been sealed.

New York's Fair Credit Reporting Act

Throughout New York and in other states, employers and landlords typically obtain information about applicants' criminal record from consumer reporting agencies:

With the advancement in information technology and the Internet, individuals' criminal records have never been more easily accessible. The background-check industry is burgeoning. Numerous companies exist that acquire and compile criminal justice information obtained from the police and the courts and assemble a database for commercial purposes. SEARCH (the National Consortium for Justice Information and Statistics) reports that, "in addition to a few large industry players, there are hundreds, perhaps even thousands, of regional and local companies" that compile and/or sell criminal justice information to end users. They provide background-check services to private employers at their convenience in a timely manner at decreasing costs.

- Alfred Blumstein and Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," Criminology, Vol. 47, No. 2 (2009), at 329

In New York, this burgeoning industry of consumer reporting agencies is regulated by both the federal and New York Fair Credit Reporting Acts (FCRA).⁵ Both the federal and New York State FRCAs require that consumer reporting agencies maintain quality-control procedures designed to ensure that all reports issued about a person's criminal history are accurate and up-to-date. See General Business Law 380-g (b). Indeed, New York's FCRA clearly prohibits consumer reporting agencies from disclosing information "which it has reason to know is inaccurate." General Business Law § 380-j(a)(3). In addition, New York's FCRA is clearly designed to reinforce New York's Human Rights Law by prohibiting consumer reporting agencies from maintaining or disclosing any information related to an arrest that resulted in a non-criminal conviction, including any arrest that led to a violation conviction. See General Business Law § 380-j(a)(1).

In other words, New York's Human Rights Law and Fair Credit Reporting Act work in tandem to ensure that employers obtain and consider only information about pending arrests or arrests that resulted in criminal convictions, and not arrests that resulted in violation convictions, which are non-criminal. These laws are designed to promote public safety by ensuring that people who have had minor contacts with the criminal justice system are able to have a fair opportunity at finding employment, which makes it far less likely that they will engage in future criminal behavior. As this study reveals, because the CHAIRS reports of *most* people who have been arrested include information about arrests that should not be disclosed because of a sealing order or because the arrest resulted in a non-criminal conviction, the Onondaga County Sheriff's Department is regularly undermining New York's law and public policy.

Study Methods and Approach

As previously stated, CCA's Reentry Clinic helps individuals regain many of their civic rights by using the legal mechanisms for relief available in New York State. Staffed by an experienced lawyer and trained paralegals, the Reentry Clinic provides an array of civic restoration services including the following: helping people better understand their criminal histories, identifying and correcting mistakes on criminal records, educating people about their rights and responsibilities when searching for a job, helping people know and use New York's anti-discrimination protections, helping people apply for Certificates of Rehabilitation, and assisting people with advocacy to appropriate state agencies for occupational licensing.

⁵ New York's FCRA defines a "consumer reporting agency" as "any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to third parties." In this report, we take no position on whether or not the Sheriff's Department is a "consumer reporting agency" for purposes of New York's FCRA. However, because New York's FCRA is an integral part of furthering New York's public policy, discussion of FCRA compliance is an important aspect of this study.

Until late 2009, the Reentry Clinic accepted “walk-in” clients who were seeking services due to a specifically identified barrier to employment; often this barrier was a mistake on their criminal history record. Since late 2009, the Reentry Clinic only provides services to people who are in a program that has funding allocated for civic restoration services. At the time of the research for this study, these programs included: Parent Success Initiative (PSI), Reintegrating and Empowering a Life (REAL), and Career Pathways.

This research was conducted by CCA’s Reentry Clinic and Justice Strategies staff in the summer of 2010. We reviewed the files of 70 clients referred to the Reentry Clinic from PSI, REAL, and Career Pathways from August 2008 through April 2010. Notably, none of these referrals came about because the client felt there was a mistake on his or her record. Each of the 70 files involved clients who had at least one arrest appearing on their CHAIRS report. In order to avoid potential distortion of the data, we did not use any files from “walk-in” clients, who often come to the Reentry Clinic specifically because of errors on their criminal history record.

To ensure that we had accurate information, we included in this research only those files for which we had obtained the client’s official criminal history record from the Division of Criminal Justice Services (DCJS) as well as official court records if there was any reason to suspect that DCJS record may be inaccurate or incomplete. As a result, the 70 client files we reviewed for this study included accurate, up-to-date disposition and sealing information.

Once our client file pool had been selected, we created a standard data collection form as a tool for reviewing the 70 files. This form is attached as Appendix A and required the collection of arrest data in four different categories: 1) Failure to Seal Arrests; 2) Violation Arrests; 3) Other Non-Criminal Arrests; and 4) Duplicate Arrests. The **Failure to Seal Arrest** category required us to identify all arrests which led to required sealing pursuant to the three main sealing statutes described above. The **Violation Arrests** category required us to identify any arrest for a violation, which is a non-criminal offense. In this category, we included only arrests that solely involved violation charges; if the arrest was for multiple charges that included not only violations, but also misdemeanors or felonies, we did not include the arrest in this category. The **Other Non-Criminal Arrests** category required us to identify the type and quantity of non-criminal, non-violation incidents, such as bench warrant arrests, violations of probation arrests, or surcharge arrests. Finally, the **Duplicate Arrests** category required us to identify any arrests which erroneously appeared twice on a person’s CHAIRS report. Because this category produced insignificant results from our data pool, this report does not include data regarding this type of mistake in our findings.

We identified and documented errors in the four categories by simultaneously reviewing each client’s CHAIRS report, DCJS report, and official court disposition and sealing information. There were times when we encountered an arrest for which we were unable to locate official disposition information, most often because the official court record had been lost or destroyed. In such instances, we conservatively elected not to count the arrest in any of the four categories,

even if we had reason to believe that the arrest should be included in one of the four categories. Similarly, because of limited resources, we were unable to obtain official disposition information for all of the violation and traffic arrests that appear on our clients' CHAIRS reports.⁶ For the purpose of this study, we assumed that all of these arrests resulted in a conviction for the arrest charge or charges. Because it is likely that at least some of these arrests resulted in dismissals and sealing orders pursuant to CPL § 160.50, our data likely underestimate the number of Failure to Seal Arrests while simultaneously overestimating the number of Violation Arrests.

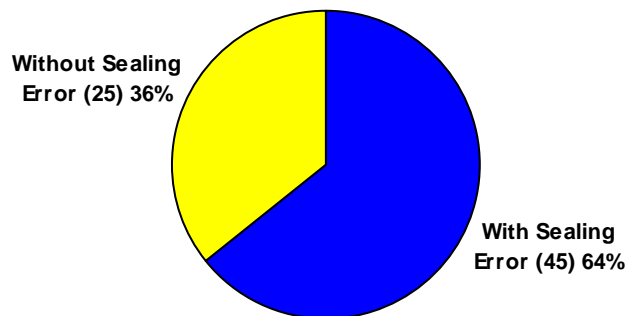
Findings

The data we collected revealed that CHAIRS reports often include arrests that should not be disclosed under New York law.

Failure to Seal Arrests

Forty-five of the 70 CHAIRS reports we reviewed contained at least one arrest in the Failure to Seal Arrest category. This means that **64.3%** of the CHAIRS reports we reviewed contained at least one arrest that should not be publicly disclosed under New York's Criminal Procedure Law. Because New York's Human Rights Law prohibits employers from asking about, considering, or requiring disclosure of sealed arrests, when used for employment purposes, almost two-thirds of the CHAIRS reports we reviewed result in an employer committing an unlawful employment practice. Figure A depicts the percentage of the 70 CHAIRS reports we reviewed that unlawfully included Failure to Seal Arrests with the percentage of those that did not.

Figure A: CHAIRS Reports With Sealing Errors Compared to Those Without (N=70)

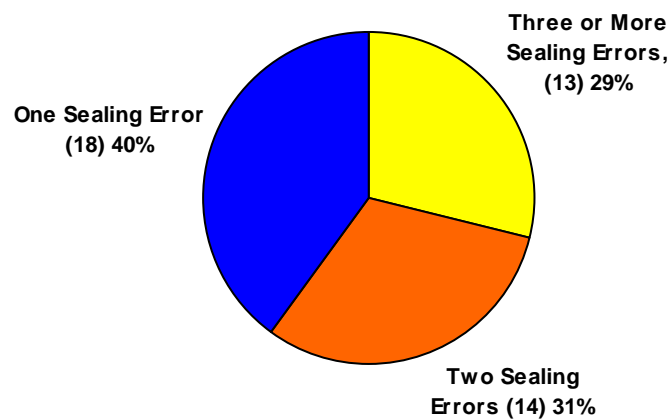


⁶ In Onondaga County, official certificates of disposition may cost as much as \$6.00 per arrest.

CCA's study suggests that almost two out of three reports produced from the CHAIRS database will contain at least one error.

We also found that many CHAIRS reports had multiple Failure to Seal Arrests. In fact, 27 of the 45 CHAIRS reports with Failure to Seal Arrests (or about 60% of the 45 CHAIRS reports unlawfully disclosing these arrests) had two or more of such arrest entries. Figure B below depicts the percentage of these 45 CHAIRS reports that included one, two, or three or more Failure to Seal Arrest entries.

Figure B: CHAIRS Reports Including One or More Failure to Seal Arrests (N=45)



We also tracked the specific type of sealing error – that is, the particular sealing provision violated by each Failure to Seal Arrest. In total, there were 96 arrests on the 70 CHAIRS reports that should have been sealed under the various sealing provisions in New York's Criminal Procedure Law. Table A below identifies the number of failures to seal under each of the more specific legal provisions.

Table A: Sealing Errors by Specific Sealing Statute

Specific Sealing Law	Number of the 96 Errors That Violate Specific Sealing Law	Percentage of the 96 Sealing Errors That Violate Specific Sealing Law
CPL § 160.50 Sealing Errors	32	33%
CPL § 160.55 Sealing Errors	26	27%
Youthful Offender Sealing Errors	12	13%
Unlawful Possession of Marijuana Sealing Error (CPL § 160.50(3)(k))	26	27%

Violation and Other Non-Criminal Arrests

In addition to Criminal Procedure Law sealing statute errors and Human Rights Law violations, we also tracked instances in which the CHAIRS reports failed to comply with New York’s Fair Credit Reporting Act (FCRA) by disclosing arrests that did not lead to criminal convictions. Of the 70 CHAIRS reports we reviewed, 53 of them, or about **76%**, listed at least one Violation Arrest. Similarly, 50 of the 70 CHAIRS report we reviewed, or **71%**, contained arrests in the Other Non-Criminal Arrest category (such as a bench warrant arrest or an arrest for a violation of probation).

Not surprisingly, many of the CHAIRS reports we reviewed contained both Violation and Other Non-Criminal Arrests. Therefore, we tabulated the number of CHAIRS reports with either one or more Violation Arrests or Other Non-Criminal Arrests. This tabulation revealed that 63 of the 70 CHAIRS reports, or **90%** of the CHAIRS reports we reviewed, contained at least one Violation or Other Non-Criminal Arrest. As stated above, New York’s Fair Credit Reporting Act does not permit consumer reporting agencies to disclose arrests that do not lead to criminal convictions. Since Violation Arrests and Other Non-Criminal Arrests do not lead to criminal convictions, this means that 90% of the CHAIRS reports we reviewed contain information that is otherwise prohibited under New York’s Fair Credit Reporting Act.

90% of the CHAIRS reports we reviewed contained arrests that should not be disclosed under New York’s Fair Credit Reporting Act.

As with the Failure to Seal Arrests, many of the CHAIRS reports we reviewed contained multiple Violation Arrests and/or Other Non-Criminal Arrests. The 70 CHAIRS reports we reviewed included a total of 164 Violation Arrests and 222 Other Non-Criminal Arrests.

Discussion

As demonstrated in previous sections of this report, public dissemination of CHAIRS reports clearly undermines New York Criminal Procedure Law, Human Rights Law and Fair Credit Reporting Act. The CHAIRS reports violate the Criminal Procedure Law by frequently containing arrests that should not be disclosed under one of New York's sealing statutes. When used for employment purposes, CHAIRS reports undermine the Human Rights Law by frequently containing information that employers are prohibited from asking about or relying upon in making employment decisions. Moreover, nearly all of the CHAIRS reports we reviewed contained at least one arrest (and most contained multiple arrests) that consumer reporting agencies are not permitted to disclose under New York's Fair Credit Reporting Act.

In response to community requests to end the practice of selling CHAIRS reports, Onondaga County Sheriff Kevin Walsh has noted that third parties (employers, landlords, volunteer organizations, etc.) cannot obtain a person's CHAIRS report unless the person signs a waiver or obtains the CHAIRS report himself and then re-discloses it to the third party. While this argument may have a theoretical appeal, it ignores the reality of the limited understanding that people have about New York's complex Criminal Procedure Law, Human Rights Law, and Fair Credit Reporting Act as well as the pressure people face when trying to find employment and stable housing. For years, the Sheriff's Department has promoted the CHAIRS report as a "criminal history records check." Most people do not realize that the CHAIRS report is not, in fact, a criminal history record but is instead merely a list of Onondaga County arrests without any disposition information, and that this list often contains arrests that, under the law, should not be disclosed to others or to employers. To the extent that people may understand that the CHAIRS report is not really a "criminal history record," they do not feel that disclosure is a genuine choice when an employer or landlord states that disclosure of the CHAIRS report is a mandatory part of the application process.

As reported in the *Syracuse Post-Standard*, Sheriff Walsh concedes that the CHAIRS reports may erroneously contain arrests that have been sealed. However, he asserts that "People have to take a little responsibility for themselves," and seek to correct these mistakes. He further states that the Sheriff's Department will remove Failure to Seal Arrests once "proof" is provided.⁷ The Sheriff's position shifts the burden from a government body responsible for maintaining accurate records to individuals with limited resources and little expertise in obtaining the requisite "proof." Even worse, the Sheriff significantly overstates the ease of correcting mistakes on the CHAIRS reports. The only "proof" that the Sheriff's Department will accept in order to remove a Failure to Seal Arrest is a certified court-issued sealing order. Yet, often it is impossible to

⁷ See Tim Knauss, "Critics say \$10 background checks sold by Onondaga County Sheriff are unreliable, overpriced," *Syracuse Post-Standard*, December 9, 2009.

locate such a sealing order because court records have been lost or destroyed. Moreover, getting a Failure to Seal Arrest removed from the CHAIRS report requires that an individual understand the law well enough to identify what arrests should be sealed, that the individual knows where and how to obtain the requisite sealing orders, and that these sealing orders exist and have not been lost or destroyed, and that the individual is also able to identify the arresting agency, which is denoted by code (and not by agency name) on the CHAIRS report. This last requirement is due to the fact that, even if given a sealing order, the Sheriff's Department will not remove a Failure to Seal arrest unless the arrest was made by the Sheriff's Department. Otherwise, a person must identify which Onondaga County law enforcement agency initiated the arrest and the person in that agency responsible for entering information into the CHAIRS database. Notably, when issuing CHAIRS reports, the Sheriff's Department provides a list of Onondaga Courts (presumably so the person knows where to go to get the appropriate "proof"), but the Sheriff's Department does not provide a list of law enforcement agencies identified by the numeric code used in the CHAIRS reports.

Notably, the Sheriff's Department will not remove Violation or Other Non-Criminal Arrests from the CHAIRS reports. At best, the decision not to do so undermines the intent of the Fair Credit Reporting Act; at worst, it is an outright violation of the Fair Credit Reporting Act. The Office of Court Administration (OCA) is the only other governmental entity that we know of that collects criminal justice involvement from a variety of sources and issues reports about this information to the public for a fee. Unlike the CHAIRS reports, however, the reports issued by the OCA do not include Violation or Other Non-Criminal Arrests.

Whatever the legality of the CHAIRS system, one thing is clear: the practice of publicly disclosing CHAIRS reports makes it more difficult for people who have ever been arrested to secure employment and stable housing, thereby making it more difficult for individuals with even minor criminal histories to move forward with their lives in a positive, law-abiding manner. If a person has had a history of arrests in Onondaga County, the CHAIRS report will almost certainly include information that makes the person's criminal conviction history look far worse than it actually is. In some cases, the CHAIRS report erroneously makes it appear as though a person without a criminal conviction history actually has one.

Dissemination of CHAIRS reports is clearly at odds with New York's law and policy encouraging the employment and licensure of people with criminal history records. Even worse, the CHAIRS reports undermine recent federal and State efforts to decrease recidivism (and thereby enhance public safety) by facilitating people's successful reintegration into the community after contacts with the criminal justice system. Over the past several years, there has been a growing awareness of the public safety problems associated with our nation's and State's high recidivism rates. A response to this growing awareness has been the implementation of efforts to meaningfully assist people as they try to reintegrate into their communities after contacts with the criminal justice system. On the federal level, these efforts have included the April, 2008 passage of the Second Chance Act, which received bi-partisan support and which is designed to facilitate the successful reintegration of people who have been jailed or imprisoned.⁸

⁸ Information about the Second Chance Act and federal efforts to facilitate reentry can be

In many regards, New York State has been ahead of the curve on understanding the importance of successful reentry efforts, and has allocated funding and state personnel time for several County Reentry Task Forces, which are designed to develop successful reentry strategies and to coordinate services. DCJS has also supported the Interagency Reentry Task Force which is designed to bring together numerous state agencies to identify, develop and implement best practices for a comprehensive, statewide reentry program.

Today, there is growing awareness of how important it is to help people in their efforts to successfully reintegrate into their communities after contacts with the criminal justice system. This awareness is reflected not only through federal and state agencies, but also in the work of faith-based and private, non-profit organizations. Public dissemination of the CHAIRS reports undermines the strides that have been made in recent years by perpetuating a fear-based approach to people with a history of criminal justice involvement. This fear-based approach not only undermines public safety, it also limits basic civil and human rights.

CONCLUSION

Throughout this report, CCA has defined “error” conservatively as the inclusion on CHAIRS reports of only those arrests that should not be disclosed pursuant to a sealing statute. Under this conservative definition, there is a shockingly high rate of errors in the CHAIRS database: almost two-thirds of the reports produced from the CHAIRS database contain errors. When documents sold by a government agency to the public contain such a high error rate, it calls into question the legitimacy of the practice of publicly disclosing such documents and jeopardizes public trust in government officials.

When documents sold by the government to the public contain an error rate of almost 65%, it calls into question the legitimacy of the practice of publicly disclosing CHAIRS reports.

Worse, by promoting use of CHAIRS reports to employers, the Sheriff’s Department is allowing employers to unwittingly engage in unlawful employment practices at disturbingly high rates.

In the past, ACTS has identified errors as one of the many problems with public disclosure of CHAIRS reports. This report does not merely show that ACTS was correct in identifying this problem, but that ACTS has been understating the degree and gravity of this problem. Now that there are data demonstrating just how prevalent errors are in CHAIRS reports, it is hard to justify continued disclosure of such an error-ridden document to the public.

found on the National Reentry Resource Center’s (NRRC) website
www.nationalreentryresourcecenter.org

APPENDIX A CHAIRS Review Project

Name of Reentry Clinic Client:

Referral Program:

Date of Referral to Reentry Clinic:

Is Reentry Clinic Case Closed? Yes No

Failure to Seal Mistakes:

- CPL 160.50 sealing. If checked, how many mistakes?
- CPL 160.55 sealing. If checked, how many mistakes?
- Youthful Offender sealing. If checked, how many mistakes?
- Youthful Offender "covered case" sealing. If checked, how many mistakes?
- UPM/Marijuana failure to seal 3 years after arrest (CPL 160.50(3)(k)). If checked, how many mistakes?
- Arrests that were not arraigned (CPL 160.50(3)(j)). If checked, how many mistakes?

Duplicate Arrests

- Duplicate arrests. If yes, # of felony charges? _____; # of misdemeanor charges # and type of conviction charges?

Violation Arrests:

- Violation arrests listed on CHAIRS. If checked, how many?
- Violation with dismissed misdemeanor listed on CHAIRS. If checked, how many?

Other Non-Criminal Arrests:

- Other non-criminal, non-violation offense arrests listed (bench warrants, violation of probation, etc.); If checked, identify:
 type of arrest: _____, how many?
 type of arrest: _____, how many?