



## **The Problem of RAP Sheet Errors: An Analysis By the Legal Action Center**

### **Introduction**

The criminal records (RAP sheets) of at least 2.1 million New Yorkers contain bureaucratic errors, according to projections from a new analysis by the [Legal Action Center](#) (LAC), a non-profit legal and policy organization based in New York City. Mistakes include misinformation about warrants that appear open but have been vacated, old cases that have long been resolved but are missing information and thus appear as if they are ongoing – including some that were never prosecuted – and the failure to properly seal dismissed cases and convictions for low level charges (sealing limits access to information). In an era in which over 92% of employers conduct criminal background checks<sup>i</sup>, and hundreds of licenses issued by government agencies consider criminal history, this error rate is unacceptable. Such errors create barriers to New Yorkers trying to find jobs, obtain professional licenses, rent apartments, get higher education and public housing, and obtain other benefits.

New York State has the ability to help address this urgent problem right now, with three pieces of legislation introduced that would improve the accuracy of RAP sheets. This analysis provides details on the extent of these errors and shows how the legislation would help to stop bureaucratic mistakes from hindering the ability of New Yorkers to rebuild their lives.

### **Scope of the problem**

The Legal Action Center closely examined 3,499 RAP sheets from its clients, looking at records from 2008 to 2011. It is believed to be the most detailed and up-to-date analysis of the different types of errors that exist in New York State's criminal justice records. The Legal Action Center determined that at least 30% of these records contained at least one error, and some contained as many as ten or more. The actual error rate is almost certainly higher, as LAC identified an additional 7% of the records as appearing to have errors. However, LAC could not verify this because of difficulties in obtaining the necessary information from the police, courts, parole, probation and other authorities, especially information on older cases. Some of these incomplete records date back to the 1950s and '60s.

Other studies have indicated an even higher percentage of errors on New Yorkers' RAP sheets. For example, in 2007, a pilot study by the Bronx Defenders found that 62% of a random sample

of New York State RAP sheets contained at least one significant error, and 32 percent had multiple errors.<sup>ii</sup>

These errors are rarely caused by the New York State's Division of Criminal Justice Services (DCJS), which is the central repository for criminal history records. Rather, they are due to misinformation or lack of information sent to DCJS by the many parties – the police, prosecutors and courts – that are required by law to send information to DCJS.

According to data from DCJS, approximately 7 million people have New York RAP sheets.<sup>iii</sup> Applying LAC's relatively conservative error rate of 30%, LAC estimates that **at least 2.1 million of these people have RAP sheet errors – and the number may well be even higher.**<sup>iv</sup>

This problem affects not only New Yorkers who currently have RAP sheets; it will be a future problem for tens of thousands of New Yorkers involved with the criminal justice system. Almost three quarters of a million arrests are made each year in New York State, nearly 60% of them in New York City.<sup>v</sup> Most of these individuals will not have legal assistance to address these errors.

Unless corrected, mistakes on RAP sheets will continue to haunt even people arrested for minor violations, such as possession of small amounts of marijuana, (approximately 50,000 people were arrested in New York City for possessing small amounts of marijuana in 2011 alone)<sup>vi</sup>, and those whose cases were never prosecuted or were dismissed – a common outcome of stop and frisk cases.

### **Types of Errors**

The most frequent RAP sheets errors are:

- **Missing information about the disposition of cases, which gives the mistaken impression that they are still open.** This can happen for many reasons. Sometimes, for example, police make an arrest and then decide not to pursue charges, or DAs decide not to prosecute a case, but they do not update the original arrest report sent to the Division of Criminal Justice. As a result, employers and others conducting criminal background checks will see an arrest but will not know the outcome, and will wrongly interpret the arrest as proof of criminal activity. Employers may also believe the arrest is still pending. Many employers who are willing to hire people with criminal convictions are reluctant or unable to employ those with unresolved cases. Where jobs or licenses are governed by statute, some statutes do not permit employment or licensure of people with a pending case.

People whose lives are disrupted by these mistakes include those whose cases were dismissed or sealed. They also include those with juvenile or youthful offender adjudications (findings) that are supposed to be confidential. In both of these categories, the arrest information should not appear at all. As a result, this problem also affects people who would have **completely clean records** if the problem were corrected.

See below for statistics that reveal the extent of these and other RAP sheet errors in more detail.

- **Mistaken information about bench warrants.** Many RAP sheets mistakenly list bench warrants as open when they have been recalled. Sometimes the case is clearly over and yet the record still erroneously indicates that a warrant is open.
- **Information about old violations and dismissals that should have been—but were not—sealed** according to New York State law. Since 1991, cases that were dismissed or resulted in convictions for non-criminal offenses are, in most cases, automatically sealed by court clerks in New York State. But before the law changed, such cases were sealed only by judicial order, and many judges inadvertently failed to issue such an order. Because many of these case records from the 1970s and 1980s are lost or destroyed, getting them sealed is often difficult and sometimes impossible.

### **The Human Impact**

What follows are four stories of New Yorkers who faced unnecessary obstacles because of mistakes on their RAP sheets. The legislative package being considered by the New York State Legislature (described below) would prevent these types of mistakes from becoming obstacles to full participation in society. For more details about their circumstances, contact Anita Marton at (212)243-1313 or [amarton@lac.org](mailto:amarton@lac.org).

- In 1970, a probation violation was erroneously recorded on the RAP sheet of SK, a New York resident. Four decades later, in 2011, the New York City Department of Consumer Affairs (DCAS) denied his application for a license to be a home improvement sales person because the violation was still listed. This information about the probation violation should never have been publicly available, because it referred to a 1969 case where SK was granted Youthful Offender status (which means his case was confidential and automatically sealed.) Fortunately, the Legal Action Center was able to help SK get the violation removed from his record. As a result, DCAS granted him the license and he subsequently got a job selling carpets. But only a tiny fraction of New Yorkers with RAP sheet errors are able to get this kind of assistance.
- CC worked for six years for a company in Syracuse that provides meals to nursing homes and other facilities. His employer liked him. Recently, after routine background checks on a company that got services from CC's employer, the Department of Health (DOH) found that CC had three "pending" arrests, all from 1985, and thus could not clear him for employment with the company. He was suspended without pay.

It turned out that two of these cases were not in fact "pending." They had been dismissed. In the third case from 1985, CC had been arraigned in local court but the case was never prosecuted, and appeared as if it was still opened on his record. CC got help from the

Center for Community Alternatives, which managed to correct the errors and ensure that all three cases were sealed. However, he remains suspended without pay, as DOH is still in the process of reviewing this updated information.

- BK, who lives in Beacon, New York, wanted permission to be a foster care parent to his grandchildren in 2011. But because his RAP sheet erroneously showed a low level drug arrest from 1977, when he was 16 years old, that looked like it was still open, his application was denied by the Dutchess County Department of Foster Care. In fact, the case should have been sealed. Police and court records of the case were so old that they had been destroyed, making it very difficult for BK to correct the RAP sheet error on his own. With some difficulty, LAC eventually got a copy of the disposition from the Beacon City Court showing that the case was sealed, the matter was cleared up, and BK received a letter from Foster Care saying he was approved. Again, this kind of help is not available to most people with RAP sheet errors similar to those that haunted BK.
- KC now works for a human services organization in New York City. He has won a national award for his contributions to the field of mental health as a result of his work with people involved with the criminal justice system. But mistakes on his RAP sheet almost prevented him from getting a job and might hurt him in the future.

He was arrested for four robberies in 2002, when he was 21. At the time, he suffered from mental health problems and was using drugs. He was fingerprinted and photographed separately for each robbery. KC pled guilty to attempted robbery, a plea that covered all the robbery charges.

KC was sentenced to five years in prison. He did his time and was released in 2006. When he got out, he discovered that his RAP sheet gives the false impression that three of the arrests are still pending – even though he had been prosecuted for those charges and those cases were over. He was repeatedly turned down from jobs as a result. He was lucky enough, and talented enough, that his current employer took a chance and hired him. But his future options are limited because the open arrests are still on his criminal record, despite repeated attempts by LAC to correct the mistakes.

### **Partial Remedy: Pending Legislation**

The following three pieces of legislation, as a package, will improve the accuracy of New York State RAP sheets and criminal record information produced by the courts, thereby also improving the accuracy of commercial background checks that rely on that information. All these proposals are supported by the Coalition of Reentry Advocates<sup>vii</sup>:

- 1. Suppress old, incomplete case records on DCJS and Office of Court Administration criminal history reports.** This amendment to the Executive Law prohibits the disclosure for civil purposes of information about cases with missing dispositions, if no entry has been made on the case file for five years.

This legislation was originally introduced in 2009. (S1395/A3381)

- 2. Allow DCJS to remove misinformation regarding bench warrants from RAP sheets.** This bill, which amends the Executive Law, prohibits DCJS from reporting bench warrant information for civil purposes, when the RAP sheet indicates that the person did in fact return to court.

This legislation was first introduced in 2009. (S3255/A2896A)

- 3. Allow sealing of dismissals and violations that are more than 20 years old.** This proposed bill creates a simple court process that would seal old cases, as required by law.

This legislation was introduced in 2013. (A7770)

### **Statistical Analysis**

The following provides details on the number and percentages of RAP sheet errors in the LAC's client database, and explains the impact this legislation would have on LAC's clients.

The Legal Action Center reviewed 3,499 RAP sheets. Some RAP sheets contained multiple errors and/or errors in multiple categories. Because of the difficulty of confirming or correcting certain errors (for instance, because of the destruction of old court records), the data below reflect confirmed and maximum possible error numbers.

Of the RAP sheets reviewed by LAC:

- Between 511 (14.6%) and 543 (15.5%) were missing disposition information
- Between 145 (4.1%) and 246 (7%) incorrectly listed open warrants
- Between 280 (8%) and 523 (15%) revealed information about violations that should have been sealed
- Between 177 (5.1%) and 363 (10.4%) revealed information about dismissed cases that should have been sealed

Other types of errors that appear on RAP sheets, such as the same conviction appearing more than once on a RAP sheet, would not be corrected by the three bills previously described, and thus are not reflected in the numbers above, but are contained in the overall error rate.

As noted above, some RAP sheets contained multiple errors; for example, some RAP sheet contained several cases that were missing dispositions. Thus, LAC estimates that if the bill to suppress old and incomplete cases were passed (bill #1, above), at least 615 cases contained in these RAP sheets would be eligible for suppression. This is in addition to the 858 cases that the Legal Action Center was able to correct.

The Legal Action Center was able to get 193 warrants corrected that appeared to be opened. Because it is often difficult to correct these cases, especially for older cases, should the warrant legislation pass (bill #2 above), many more warrants that LAC was unable to correct would undoubtedly be eligible for suppression.

Finally, LAC was able to get 283 old dismissals and cases that District Attorneys decided not to prosecute, and 371 old violations sealed. Getting these cases sealed can often be very time consuming and incredibly challenging, especially when individuals are not represented by an attorney. Should bill #3, above, be passed to make it easier to seal cases that occurred before 1991, 387 dismissals and 266 violation convictions on these records would be eligible to be sealed.

## **Conclusion**

The bills described above to improve the accuracy of RAP sheets would not remove all of the errors found in criminal history records, but they would go a long way towards addressing this widespread problem. Governor Cuomo has introduced a promising Work for Success program to help the formerly incarcerated find employment. It is time for New York State legislators to do their part as well, and vote to ensure that bureaucratic errors are not barriers to people trying to rebuild their lives.

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<sup>i</sup> Michelle N. Rodriguez and Maurice Emsellem, *65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment* (New York: National Employment Law Project, March 2011). [http://www.nelp.org/page/-/65\\_Million\\_Need\\_Not\\_Apply.pdf?nocdn=1](http://www.nelp.org/page/-/65_Million_Need_Not_Apply.pdf?nocdn=1)

<sup>ii</sup> <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/1st-Dept-Non-Testifying-Witness-Submissions.pdf>

<sup>iii</sup> New York State's Division of Criminal Justice Services reports that as of 4/23/13, there were 7.2 million NYSID numbers in existence. NYSID numbers are unique identifiers assigned to an individual upon arrest. This does not exactly represent the number of New York State rap sheets because individuals who are arrested and have their cases sealed get a new NYSID number if they are arrested again, though people with juvenile records are excluded from this count, so we believe the numbers should be very similar.

<sup>iv</sup> This problem has been recognized by the New York State Division of Criminal Justice Services, which calculates the rate of potential errors based on number of cases processed rather than the number of people with criminal records.

<sup>v</sup> <http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/Allcounties.pdf>

<sup>vi</sup> [http://www.drugpolicy.org/sites/default/files/One\\_Million\\_Police\\_Hours.pdf](http://www.drugpolicy.org/sites/default/files/One_Million_Police_Hours.pdf)

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<sup>vii</sup> CoRA members include the Bronx Defenders, Center for Community Alternatives, Community Service Society, Fortune Society, Legal Action Center, MFY Legal Services, and Youth Represent.