March 6, 2018

THEODORE ROOSEVELT
AMERICAN INN OF COURT

"Collateral Consequences of Criminal Convictions"

March 15, 2018 Program

Presenters:

Hon, Michael Ciaffa

Richard Eisenberg, Esq.

Andrew Turro, Esq.

Russell Tisman, Esq.

Brian Neary, Hofstra Law Student

Jenna Dysart, Hofstra Law Student

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Agenda

Fact Pattern *"A bad day at Jones Beach"*	10 minutes
Consultation with Counsel *"There's good news and bad news..."*	20 minutes
Lecture *Summary of Legal Provisions Related to Consequences of Criminal Convictions.*	35 minutes
Panel Discussion / Questions From Audience • *Is new CPL Section 160.59 a breakthrough or merely a modest change to existing law?* • *Correction Law Article 23-A and employment discrimination of persons with criminal convictions – Is more reform necessary?* • *New York City Fair Chance Act – how beneficial a change?*	45 minutes

COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS IN NEW YORK

Provisions For the Sealing of the Records of Criminal Proceedings

Where the "Arrest and Prosecution shall be deemed a nullity." (CPL Section 160.60).

CPL Section 160.50

Order upon termination of criminal action in favor of the accused

Arrest records sealed, and the destruction or return to defendant of photographs and fingerprints.

Section 3 specifies terminations requiring sealing:

Dismissal

Acquittal

Judgment vacated

Dismissal pursuant to CPL 190.75 (Grand Jury "No Bill")

Exceptions: CPL 170.56 (ACD for Marijuana) and CPL 210.46 (ACD/Felony Drug Charge) - Photo and prints not returned.

Sealing under Section 160.50 is automatic unless denied by the Court.

CPL Section 160.55

Order upon termination of non-criminal offense.

Provides for return of photographs and fingerprints. Does not provide for record sealing as per CPL 160.50.

Relates to all violations and traffic infractions except for persons under age 21 convicted of VTL 1192(1) (Driving while impaired).

CPL Section 160.58

Conditional sealing upon completion of a Drug Diversion Program as defined in CPL Section 216.

Does not seal records regarding:

a) Law enforcement agencies generally.

b) Police agencies where defendant is seeking employment.

c) Any government agency involved in processing an application by defendant for a gun permit.

CPL Section 170.55 ACD Generally and for Marijuana possession CPL 170.56.

Discretionary with the Court.

Effect of completion of ACD is per 160.50

Various possible conditions may be attached to ACD:

a) Agency supervision.

b) Other conditions.

CPL Section 215.40

Diversion Programs – Community Dispute Resolution Centers – Applicability of ACD in certain cases.

CPL Sections 216.00 and 216.05

"Drug Courts" for Felony Cases. Dismissal available upon satisfactory completion of rehabilitation program and other statutory requirements.

CPL Sections 720.10 – 720.35

Youthful offender treatment. Persons age 16-19 (Note new age changes relating to jurisdiction of Family Court).

Felonies and misdemeanors covered except for several specified crimes §720.10 (2).

Requires affirmative finding by the Court of youthful offender status.

Records deemed "confidential" and are to be made available to school authorities 720.35.

Prohibition of Employment Discrimination

- Corrections Law Art, 23-A Sections 750-755
- Safe harbor provisions –Section 752:
    a) "direct relationships" test
    b) "unreasonable risk" test
- Enforced through state Human Rights Law, Specifically Section 296, Subsections 15 and 16. Section 297, Subsection 9 provides for private right of action.
- Effects Employment and Licenses

NYC Fair Chance Act (2015)

- Modifies process under Correction Law Article 23A
- Conditional employment offers
- Does not expand sealing protections to applicants

New Sealing Statute CPL 160.59

Greatly expands pool of potential persons eligible for sealing convictions.

Permits sealing of one felony and one misdemeanor or two misdemeanors.

Motion required. Discretionary with Court; Factors considered are included in Section 7. Available ten (10) years after completion of any sentence served.

Other Tools for Mitigation of the effects of Criminal Convictions:

- Corrections Law Sections 700-706. (Certificate of Relief from Disabilities / Certificate of Good Conduct).

Other Collateral Consequences of Convictions:

- Immigration Status
- Voting Restrictions
- Military Service
- Bar Admission
- Student Loans
- Public Housing Access
- Sex Offender Restrictions
- Suspension and Debarment from Public Contracting

PROGRAM EXHIBITS

New York Criminal Procedure Law

1.	Section	160.50	Sealing / Crimes
	Section	160.55	Sealing / Violations
	Section	160.58	Sealing / Drugs
	Section	160.60	General Effects of Sealing
2.	Section	170.55	ACD
	Section	170.56	ACD / Marijuana
3.	Sections	215.10 – 215.40	ADR Cases
	Sections	216.00 – 216.05	Drugs / Diversion Programs
4.	Sections	720.10 – 720.35	Youthful Offenders
5.	Section	160.59	New Statute

Other Materials

6. NYCourts.gov / Form for Section 160.59
7. Collateral Consequences Resource Center – FAQs for Section 160.59
8. New York Correction Law Sections 750-755
9. New York Human Rights Law Sections 290, 296 (partial), 297
10. Fair Chance Act / Legal Enforcement Guidance / NYC Commission on Human Right
11. Certificates of Relief From Disabilities / Certificates of Good Conduct-Frequently asked questions
12. NY Courts Website - Collateral Consequences Summary
13. U.S. GSA – FAQs – Suspension and Debarment
14. License Requirements (Excerpt) – Nursing
15. Guide for Attorneys Representing College Applicants and Students
16. Collateral Consequences of Convictions Memorandum

PRESENTERS' BIOGRAPHIES

MICHAEL A. CIAFFA

Of Counsel

Michael A. Ciaffa

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Michael A. Ciaffa, Esq.
Forchelli Deegan Terrana LLP
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516-248-1700

Michael A. Ciaffa is Of Counsel in the firm's Litigation Department. He handles a wide variety of complex civil litigation matters, from their inception through appeal, together with select criminal appeals.

Mr. Ciaffa was a Nassau County District Court Judge from 2009-2014, where he presided over the busy trial and motion calendar, hearing thousands of no-fault disputes and other civil and criminal cases. During his tenure, he had many "Decisions of Interest" published in the *New York Law Journal*. More than two dozen of his decisions were accepted for publication in the New York Miscellaneous Reports – the most of any District Court Judge during his six years on the bench.

Throughout the course of a legal career spanning more than three decades, Mr. Ciaffa has achieved notable success litigating high profile commercial cases, partnership disputes, insurance coverage issues, and lawsuits challenging illegal or unconstitutional government actions. In McCann v Scaduto, for example, he saved a widow's home after Nassau County sold it to a tax lien speculator because the widow had missed a small tax payment. In a precedent setting ruling by the New York Court of Appeals, it accepted his argument that Nassau County's tax foreclosure law violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Between 1984 and 2008, he worked as a litigator at Meyer, Suozzi, English & Klein, P.C. Before that, he served as the Law Secretary to Justice Jeffrey G. Stark of the Supreme Court, Nassau County. During the first six years of his legal career, he was a member of the Criminal Appeals Bureau of the Legal Aid Society of New York. He obtained his J.D. degree from St. John's Law School in 1977. In 1974, he received a B.A. from Colgate University

Mr. Ciaffa is a member of the New York State and Nassau County Bar Associations. He is admitted to practice law in the State of New York, and before the United States District Courts for the Southern and Eastern Districts of New York, the U.S. Court of Appeals for the Second Circuit, and the United States Supreme Court. In 2008, 2014, 2016, and again in 2017, he was found "well qualified" to serve as a District Court Judge by the Nassau County Bar Association.

RUSSELL G. TISMAN

Partner

Russell G. Tisman

rtisman@forchellilaw.com (mailto:rtisman@forchellilaw.com)

Russell G. Tisman specializes in complex corporate, commercial, defense, employment, labor, personal injury, and Surrogate's Court litigation. He has tried cases and argued appeals in federal and state courts and administrative agencies throughout the United States, and in arbitration and other alternate dispute resolution fora. Mr. Tisman also actively counsels management and human resource professionals on employment and labor matters. He represents public companies, privately held businesses, insurers, financial institutions, and individuals in all types of business-related disputes, in addition to representing individuals, insurance carriers, and businesses in personal injury litigation.

Mr. Tisman commenced practice in 1977 with a multinational, Wall Street law firm. From 1980 to 1987, he was Senior Litigation Counsel of ITT Corporation, where he was responsible for employment litigation system-wide and commercial, antitrust, and product liability defense litigation. ITT awarded him an outstanding achievement award. Mr. Tisman was a founding member and head of the litigation and employment and labor practices of Groman, Ross & Tisman, P.C., which joined the Firm in 2006.

He has published articles in various journals including the *Journal of the American Corporate Counsel Association*, and the *National Law Journal*, *the Suffolk Lawyer,* and treatise sections on litigation and employment topics, including chapter updates for BNA's Employment Discrimination Law treatise, and has lectured on employment and litigation law and alternative dispute resolution before both local and national audiences.

Mr. Tisman actively serves as an arbitrator and mediator in commercial and employment disputes. He has been a court-appointed arbitrator and an arbitrator for the American Arbitration Association and NAM. Mr. Tisman has been recognized for his volunteer efforts on behalf of Live On New York, formerly the New York Organ Donor Network.

He has been AV-Rated by Martindale Hubbell for more than 25 years. Mr. Tisman was honored by the Nassau County Bar Association for distinguished career, professional achievement, expertise, and leadership in the field of Labor and Employment. He repeatedly has been named a *New York SuperLawyers* commercial litigator, and has been selected by *Long Island Business News* as one of Long Island's leading employment and labor lawyers in its "*Who's Who in Law*" edition, and as a Legal Eagle by *Long Island Pulse Magazine*, among other honors he has received.

Andrew J. Turro

Member of the Firm

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Practice Areas

Litigation & Dispute Resolution

Employment Law

Equine & Racing Law

Criminal Defense

Professional Responsibility

Education

Union University, Albany Law School
J. D., 1981

University of Chicago
M.A., 1977

State University of New York at Buffalo
B.A., 1976
magna cum laude

Memberships

American Bar Association

New York State Bar Association

Nassau County Bar Association

American Inn of Court, Nassau Chapter, Master

Admissions

New York State

U.S. Supreme Court

U.S. Court of Appeals for the Second and Fourth Circuits

U.S. District Court, Northern, Southern, Eastern, and Western Districts of New York

Andrew J. Turro is a Member of Meyer, Suozzi, English & Klein, P.C.'s Litigation & Dispute Resolution Department, Employment Law practice and heads the firm's Equine & Racing Law practice, which was featured in *Long Island Business News* in February 2015. Mr. Turro has extensive experience in state and federal appellate and trial litigation, in both the civil and criminal areas. His litigation practice covers a broad range of complex commercial, civil, employment, criminal and labor-related matters. Mr. Turro represents professionals (i.e., lawyers, doctors, and other medical care providers) in professional disciplinary proceedings as well as businesses and individuals before various state and federal agencies. Mr. Turro's practice also includes several substantial equine law matters in which he has represented both individuals and professional groups before the New York State Gaming Commission (formerly the Racing and Wagering Board) and the New York State Courts.

Mr. Turro has represented large international companies as well as local businesses and individuals. An accomplished litigator, Mr. Turro has achieved successful results for his clients in several seminal cases impacting on issues involving landowner liability, the valuation of a municipality's tax assessments on environmentally impaired properties, such as Superfund sites, and attacks on the legality of regulations promulgated by governmental agencies. In his employment law practice, Mr. Turro represents clients in a variety of State and Federal matters, including employment discrimination claims arising under Title VII, the ADA, and the State Human Rights Law as well as Minimum Wage/Overtime claims under the Fair Labor Standards Act and New York State Labor laws. Mr. Turro also provides advice to clients in connection with employment contracts, severance agreements, comprehensive restrictive covenants, and a variety of commercial contracts. He has also authored numerous articles covering topics including the valuation of contaminated real property, the nature and scope of various legal privileges recognized by the courts, and on various employment-related legal issues.

In addition to his litigation experience, Mr. Turro also acts as general outside corporate counsel, advising corporate clients on a broad range of legal matters including employment issues, business strategy matters, and compliance with local and federal rules and regulations.

Notable experience includes:

- Successfully prevailed before the New York State Appellate Division, Third Department, in a challenge on behalf of a race horse trainer, which resulted in the dismissal of entire case in which the NYS Gaming Commission alleged over 1,700 drugging violations.

Andrew J. Turro

- Successfully prevailed in challenge before the New York State Supreme Court attacking the legality of the New York State Racing and Wagering Board's Out of-Competition drug testing regulations for race horses.
- Prevailed in a New York State Supreme Court election law case involving the New York State Thoroughbred Horsemen's Association.
- In a case of first impression prevailed on appeal before the New York State Court of Appeals in a challenge against a municipality's real estate valuation of environmentally contaminated property.
- Prevailed on appeal before the New York State Appellate Division, Second Department, in defending property owner against claim of landlord liability based upon the intentional shooting of tenant.
- Obtained favorable result on behalf of medical doctor before medical disciplinary board.
- Obtained favorable result from New York State Appellate Division, Second Department, reducing disciplinary sanctions imposed on practicing attorney.
- Obtained favorable resolution on behalf of numerous municipal employees based upon racial and ethnic discrimination against New York City Fire Department, Sanitation Department and Police Department.
- Acts as general outside corporate counsel to a substantial recycling business, provides ongoing oversight of all legal affairs of the company, including employment, regulatory, acquisitions, operating agreements, independent contractor agreements, and related matters.

Mr. Turro also coordinates the pro bono program at the Meyer, Suozzi firm. Under his supervision, the firm's pro bono program has become involved in a wide range of matters providing legal assistance to numerous local not-for-profit and charitable organizations (i.e., Island Harvest, the Long Island Arts in Education Roundtable, the Nassau County Museum of Art), legal organizations designed primarily to address the needs of persons of limited needs (i.e., Nassau/Suffolk Law Services Committee, Inc. and the Nassau County Coalition Against Domestic Violence), as well as individuals such as families and students with special education needs.In 2013, Mr. Turro was named an Access to Justice Champion by the Nassau County Bar Association for his dedication in providing legal representation on a pro bono basis.

From 2001 through 2012, Mr. Turro also served as a member and the Chairman of the Nassau County Board of Ethics, the Board that reviews and issues opinions on conflicts of interest and other ethical issues involving county workers. Mr. Turro also serves as a member of both the Nassau County Bar Association's Ethics Committee and Grievance Committee and previously served as Chief Assistant Counsel to the Governor's Judicial Screening Committee for the Second Department. From 1994 through 2014, Mr. Turro was also an adjunct member of the law faculty of New York Law School where he taught upper level appellate writing and advocacy courses.

Active in civic and community affairs and groups throughout the Long Island area, Mr. Turro has been a member of the Nassau/Suffolk Law Services' Executive Committee and Advisory Council. Mr. Turro also sits on the Advisory Board of Island Harvest. He previously served as a committee member of the Rockville Centre We Care Fund, as a Deputy Village Attorney to Rockville Centre, and as a coach in the Rockville Centre Soccer Club and the Rockville Centre Little League.

Before joining Meyer, Suozzi, English & Klein, P.C. in 1987, Mr. Turro served as an Assistant District Attorney in New York County and clerked for the United States Court of Appeals for the Fourth Circuit. At the Manhattan District Attorney's office, Mr. Turro split his time as a felony trial prosecutor and as a member of its Appeals Bureau. As an Assistant District Attorney, Mr. Turro was responsible for investigating and prosecuting felonies from grand jury presentation through verdict and for the briefing and oral argument of felony appeals in the state appellate courts and of federal habeas cases before the Second Circuit. At the District Attorney's office, Mr. Turro also headed the office's pro bono Appellate Program. During his tenure as a federal law clerk at the Fourth Circuit, Mr. Turro worked extensively reviewing civil rights claims arising under Section 1983 and Title VII, administrative determinations of federal agencies, and direct criminal appeals.

Mr. Turro is rated "AV Preeminent" by Martindale-Hubbell, the highest level in professional excellence. In 2016, Mr. Turro was named a "Top Ten Legal Eagle" from *Long Island Pulse Magazine* as one of the ten top attorneys on Long Island. Mr. Turro has also been the recipient of the Touro Law Center Pro Bono Attorney of the Year Award (2004) and of the Nassau/Suffolk Law Services' Partner in Justice Award. In 2014, Mr. Turro was named a finalist in *SmartCEO's* ESQ Awards for the Industry Practice: Equine and Racing Law.

Richard Eisenberg

Of Counsel

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Practice Areas

Corporate Law

Corporate Finance

Real Estate Law

Litigation & Dispute Resolution

Alternative Dispute Resolution

Local Government, Land Use Law & Environmental Compliance Real Estate Law

Education

Boston University Law School
J.D., 1976

University of Rochester
B.A., 1973

Memberships

Nassau County Bar Association

Theodore Roosevelt Inn of Court

Alexander Hamilton Inn of Court

United States District Court, Eastern District of New York Mediation Panel

Usdan Center for the Creative and Performing Arts, Board of Trustees

Touro Law Center Institute For Land Use and Sustainable Development, Chair

Admissions

New York State

U.S. Supreme Court

Second Circuit Court of Appeals

U.S. District Court, Southern and Eastern Districts of New York

U.S. Tax Court

Since January 2008, Richard Eisenberg has been Of Counsel to Meyer, Suozzi, English & Klein, P.C. located in Garden City, Long Island, N.Y., practicing in the Corporate law, Corporate Finance, Real Estate and Litigation and Dispute Resolution practices. Mr. Eisenberg has a broad range of litigation experience in areas including contracts, securities fraud, RICO, anti-trust, land title matters, patent infringement, insurance coverage disputes, construction claims, corporate valuations and criminal matters. He has conducted jury and non-jury trials to verdict, as well as arbitrations and mediations, in the State and Federal courts throughout the New York metropolitan area. His appellate practice includes appearances before the Appellate Division, Second Department, the New York State Court of Appeals, the Second Circuit Court of Appeals and the United States Supreme Court. In his transactional work, Mr. Eisenberg has counseled clients in corporate reorganizations, internal investigations, bankruptcy, real estate financing, contracts, deferred compensation programs, intellectual property matters, mergers and acquisitions, tax matters, environmental compliance and the selection and supervision of outside counsel and accountants.

Notable experience includes:

- Has served as the owner's representative or project executive on approximately 100 million dollars of completed real estate development projects, both public and private. For these projects, he was responsible for land acquisition, planning, zoning, commercial and retail leasing, mortgage lending, property management, construction agreements and supervision of architects, engineers and contractors.

- Has served as General Counsel to numerous privately held corporations with interests in military manufacturing, software consulting, consumer products, engineering, construction and property management. In that position, he has directed mergers and acquisitions, corporate finance, government and commercial contracts, regulatory compliance and the supervision of litigation throughout the United States.

- Served as the Executive Secretary to a major private family charitable foundation on Long Island; supervised grant-making and administration.

Richard Eisenberg

- From 1984-2005 he was a member of the Valley Stream, New York Board of Education. During that period he served several terms as Board President. He worked closely with school district attorneys regarding litigation matters on behalf of the school district, and was responsible for the supervision of a multimillion dollar bond issue for school construction and renovation. In addition, Mr. Eisenberg served as the employer's representative for the negotiation of public employee contracts over a 14 year period.

Mr. Eisenberg began his career as a Kings County Assistant District Attorney, where he prosecuted felony cases including homicides and public corruption matters. During part of his tenure as an Assistant DA, he was assigned to the Office of the Special Narcotics Prosecutor for the City of New York from 1977 to 1978.

JENNA DYSART

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EDUCATION

Maurice A. Deane School of Law at Hofstra University, Hempstead, NY
Juris Doctor Candidate May 2019
GPA: 3.72; Rank: 15/209 (7.18%)
Honors: *Hofstra Law Review*, Research Editor, Vol. 47; *Hofstra Law Review*, Staff Member, Vol. 46; Dean's List; Academic Merit Scholarship
Activities: Semi Finalist, Hofstra Trial Advocacy Association; Phi Alpha Delta; Veterans Law Student Association

SUNY New Paltz, New Paltz, NY
Bachelor of Liberal Arts, December 2015
GPA: 3.3
Activities: Psychology Association; Student Alliance for Social Service Club

LEGAL EXPERIENCE

Maurice A. Deane School of Law at Hofstra University, Hempstead, NY
Teaching Assistant for Professor Susan Joffe, August 2017 – Present
Selected to assist students with first-year legal research, analysis and writing course.

Unemployment Action Center, Maurice A. Deane School of Law at Hofstra University, Hempstead, NY
Student Advocate, August 2017 – Present
Represent clients who have been denied unemployment benefits by the NYS DOL. Prepare cases by interviewing clients, gathering facts, and researching case law. Prepare opening statements and direct examinations of witnesses. Present clients' cases before an Administrative Law Judge.

Ogletree Deakins, New York, NY
1L Summer Associate, May 2017 – August 2017; *2L Summer Associate*, May 2018 – August 2018
Researched and wrote memoranda regarding labor and employment law issues including unemployment insurance, misclassification of independent contractors, split shift and spread of hours, and employment discrimination based on criminal conviction. Drafted summaries for clients to better understand new laws such as the Paid Family Leave Law.

Suffolk County District Attorney's Office, Hauppauge, NY
Intern, June 2014 – August 2014
Assisted with various matters including investigating defendants, reviewing bank statements and documents to track defendants' spending habits, organizing evidence for white collar crime cases, and maintaining databases and filing system. Observed courtroom proceedings including sentencing hearings and jury selection.

Dutchess County Public Defender's Office, Poughkeepsie, NY
Intern, September 2013 – January 2013
Conducted in-take interviews of walk-in clients. Visited jail and conducted intake-interviews of incarcerated clients. Reviewed case facts to determine whether client qualified for public assistance. Summarized client information for attorneys. Filed office documents.

Suffolk County Legislator, Thomas Cilmi, Islip, NY
Intern, June 2012 – August 2012
Conducted research and wrote summaries regarding a variety of issues relating to commercial, residential, and retail constituent matters. Attended committee hearings and presented research findings. Communicated regularly with legislative staff members.

OTHER EXPERIENCE

Carleton Avenue Deli, Islip Terrace, NY
Manager, September 2010 – August 2016 (seasonal)
Managed employees in a high volume, fast-paced environment. Oversaw and managed payroll, inventory, and coordinated catered events.

COMMUNITY SERVICE & INTERESTS

Volunteer, New Paltz Elementary and Middle School Gymnastics Team; yoga; hiking; travel (London, Paris, Berlin, Rome, Venice, Ireland, Australia, Prague)

BRIAN M. NEARY

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EDUCATION

Maurice A. Deane School of Law at Hofstra University, Hempstead, NY
Juris Doctor Candidate, May 2018
GPA: 3.40
Honors: *American College of Trust and Estate Counsel Law Journal*, Research Editor, Volume 43
Dean's List (Fall 2016); Dean's Academic Scholarship;
Activities: National Institute for Trial Advocacy Training (NITA); Public Justice Foundation

University of South Carolina, Moore School of Business, Columbia, SC
Bachelor of Science in Business Administration, Finance with Advertising and Public Relations Minor, May 2013
Honors: National Society of Collegiate Scholars
Activities: Golf Club; Lacrosse Club

LEGAL EXPERIENCE

U.S Attorney's Office, Eastern District of New York, Central Islip. NY
Legal Intern, January 2018 – Present
Conduct legal research and draft memoranda regarding a variety of issues including attorney-client privilege and the admissibility of prior bad acts committed by a witness. Observe court proceedings and assist Assistant United States Attorneys in the preparation for the upcoming trial of a criminally accused politician.

Clinical Prosecution Practicum, Suffolk County District Attorney's Office, Central Islip, NY
Legal Extern, August 2017 – December 2017
Under student practice order, was responsible for prosecuting all aspects of 12 misdemeanor cases. Interviewed complainants, witnesses, and police officers. Wrote motions. Arraigned defendants. Conferenced cases with defense attorneys. Formulated plea bargain offers. Presented plea offer applications on the record.

Nassau County District Attorney's Office, Mineola, NY
Major Offense Bureau Intern, June 2017 – July 2017
Conducted legal research for a variety of issues including evidentiary admissions and challenges to grand jury proceedings. Wrote legal memoranda for pending murder trials. Gathered discovery materials for defense counsel. Observed court procedures and attended lectures regarding various criminal procedures.

Charleston Pro Bono Legal Services, Charleston, SC
Ackerman Fellow, June 2016 – July 2016
Helped provide free legal services to low-income families. Drafted litigation documents for civil matters involving divorce, child custody, and child support matters. Communicated regularly with clients through phone and in-person consultations.

Supreme Court of New York, Suffolk County, Riverhead, NY
Judicial Intern for the Honorable William J. Condon, May 2016 – June 2016
Conducted legal research and drafted bench memoranda for criminal matters, including cases involving *Molineux* and *Sandoval* hearings. Participated in chamber discussions and observed judicial proceedings.

Law Office of Brian P. Neary P.C., Huntington, NY
Paralegal, August 2014 – August 2015
Proofread transactional and litigation documents drafted by counsel. Organized case files and compiled exhibits for motion practice. Provided administrative services and performed process service duties.

OTHER EXPERIENCE

Lynch Development Associates, Huntington NY
Campaign Director, January 2014 – July 2014
Conducted capital campaigns for Catholic parishes and generated millions of dollars in pledge commitments. Conducted direct mailings, telephone solicitations to thousands of parishioners, and hundreds of feasibility study interviews. Scheduled, organized and presented to potential donors at private and large group receptions.

Huntington Crescent Club, Huntington, NY
Caddy, May 2004 – August 2015
Assisted golfers during rounds of golf. Worked at major club tournaments and golf outings, including the set up and coordination of golf carts to accommodate 150+ golfers.

INTERESTS

Golf; boating; wakeboarding; fishing; snowboarding; trading own portfolio on Scottrade.

Exhibit 1

New York Laws

New York State Law

Criminal Procedure Law

Consolidated Laws of New York's CPL code

Search CPL Laws

Criminal Procedure Law Search

CPL Search Term | Search

Article 160 - NY Criminal Procedure Law

FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANT AFTER ARREST CRIMINAL IDENTIFICATION RECORDS AND STATISTICS

Section	Description
160.10	Fingerprinting; duties of police with respect thereto.
160.20	Fingerprinting; forwarding of fingerprints.
160.30	Fingerprinting; duties of division of criminal justice services.
160.40	Fingerprinting;transmission of report received by police.
160.45	Polygraph tests; prohibition against.
160.50	Order upon termination of criminal action in favor of the accused.
160.55	Order upon termination of criminal action by conviction for noncriminal offense; entry of waiver; administrative findings.

Section	Description
160.58	Conditional sealing of certain controlled substance, marihuana or specified offense convictions.
160.60	Effect of termination of criminal actions in favor of the accused.

S 160.10 **Fingerprinting; duties of police with respect thereto.**

1. Following an arrest, or following the arraignment upon a local criminal court accusatory instrument of a defendant whose court attendance has been secured by a summons or an appearance ticket under circumstances described in sections 130.60 and 150.70, the arresting or other appropriate police officer or agency must take or cause to be taken fingerprints of the arrested person or defendant if an offense which is the subject of the arrest or which is charged in the accusatory instrument filed is:

(a) A felony; or

(b) A misdemeanor defined in the penal law; or

(c) A misdemeanor defined outside the penal law which would constitute a felony if such person had a previous judgment of conviction for a crime; or

(d) Loitering for the purpose of engaging in a prostitution offense as defined in subdivision two of section 240.37 of the penal law.

2. In addition, a police officer who makes an arrest for any offense, either with or without a warrant, may take or cause to be taken the fingerprints of the arrested person if such police officer:

(a) Is unable to ascertain such person's identity; or

(b) Reasonably suspects that the identification given by such person is not accurate; or

(c) Reasonably suspects that such person is being sought by law enforcement officials for the commission of some other offense.

3. Whenever fingerprints are required to be taken pursuant to subdivision one or permitted to be taken pursuant to subdivision two, the photograph and palmprints of the arrested person or the defendant, as the case may be, may also be taken.

4. The taking of fingerprints as prescribed in this section and the

submission of available information concerning the arrested person or the defendant and the facts and circumstances of the crime charged must be in accordance with the standards established by the commissioner of the division of criminal justice services.

S 160.20 **Fingerprinting; forwarding of fingerprints.**

Upon the taking of fingerprints of an arrested person or defendant as prescribed in section 160.10, the appropriate police officer or agency must without unnecessary delay forward two copies of such fingerprints to the division of criminal justice services.

S 160.30 **Fingerprinting; duties of division of criminal justice services.**

1. Upon receiving fingerprints from a police officer or agency pursuant to section 160.20 of this chapter, the division of criminal justice services must, except as provided in subdivision two of this section, classify them and search its records for information concerning a previous record of the defendant, including any adjudication as a juvenile delinquent pursuant to article three of the family court act, or as a youthful offender pursuant to article seven hundred twenty of this chapter, and promptly transmit to such forwarding police officer or agency a report containing all information on file with respect to such defendant`s previous record, if any, or stating that the defendant has no previous record according to its files. Such a report, if certified, constitutes presumptive evidence of the facts so certified.

2. If the fingerprints so received are not sufficiently legible to permit accurate and complete classification, they must be returned to the forwarding police officer or agency with an explanation of the defects and a request that the defendant`s fingerprints be retaken if possible.

S 160.40 **Fingerprinting; transmission of report received by police.**

1. Upon receipt of a report of the division of criminal justice services as provided in section 160.30, the recipient police officer or agency must promptly transmit such report or a copy thereof to the district attorney of the county and two copies thereof to the court in which the action is pending.

2. Upon receipt of such report the court shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.

S 160.45 **Polygraph tests; prohibition against.**

1. No district attorney, police officer or employee of any law enforcement agency shall request or require any victim of a sexual assault crime to submit to any polygraph test or psychological stress evaluator examination.

2. As used in this section, "victim of a sexual assault crime" means any person alleged to have sustained an offense under article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law.

S 160.50 **Order upon termination of criminal action in favor of the accused.**

1. Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision three of this section, unless the district attorney upon motion with not less than five days notice to such person or his or her attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his or her attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the record of such action or proceeding shall be sealed and the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated in favor of the accused, and unless the court has directed otherwise, that the record of such action or proceeding shall be sealed. Upon receipt of notification of such termination and sealing:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, except a dismissal pursuant to section 170.56 or 210.46 of this chapter, and all duplicates and copies thereof, except a

digital fingerprint image where authorized pursuant to paragraph (e) of this subdivision, shall forthwith be, at the discretion of the recipient agency, either destroyed or returned to such person, or to the attorney who represented such person at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprint or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, including those relating to actions or proceedings which were dismissed pursuant to section 170.56 or 210.46 of this chapter, shall forthwith formally request in writing that all such copies be destroyed or returned to the police department or law enforcement agency which transmitted or forwarded them, and, if returned, such department or agency shall, at its discretion, either destroy or return them as provided herein, except that those relating to dismissals pursuant to section 170.56 or 210.46 of this chapter shall not be destroyed or returned by such department or agency;

(c) all official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency;

(d) such records shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice

requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is on parole supervision as a result of conditional release or a parole release granted by the New York state board of parole, and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision or (v) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto, or (vi) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision; and

(e) where fingerprints subject to the provisions of this section have been received by the division of criminal justice services and have been filed by the division as digital images, such images may be retained, provided that a fingerprint card of the individual is on file with the division which was not sealed pursuant to this section or section 160.55 of this article.

2. A report of the termination of the action or proceeding in favor of the accused shall be sufficient notice of sealing to the commissioner of the division of criminal justice services unless the report also indicates that the court directed that the record not be sealed in the interests of justice. Where the court has determined pursuant to subdivision one of this section that sealing is not in the interest of justice, the clerk of the court shall include notification of that determination in any report to such division of the disposition of the action or proceeding.

3. For the purposes of subdivision one of this section, a criminal action or proceeding against a person shall be considered terminated in

favor of such person where:

(a) an order dismissing the entire accusatory instrument against such person pursuant to article four hundred seventy was entered; or

(b) an order to dismiss the entire accusatory instrument against such person pursuant to section 170.30, 170.50, 170.55, 170.56, 180.70, 210.20, 210.46 or 210.47 of this chapter was entered or deemed entered, or an order terminating the prosecution against such person was entered pursuant to section 180.85 of this chapter, and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(c) a verdict of complete acquittal was made pursuant to section 330.10 of this chapter; or

(d) a trial order of dismissal of the entire accusatory instrument against such person pursuant to section 290.10 or 360.40 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(e) an order setting aside a verdict pursuant to section 330.30 or 370.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people and no new trial has been ordered; or

(f) an order vacating a judgment pursuant to section 440.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people, and no new trial has been ordered; or

(g) an order of discharge pursuant to article seventy of the civil practice law and rules was entered on a ground which invalidates the conviction and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(h) where all charges against such person are dismissed pursuant to section 190.75 of this chapter. In such event, the clerk of the court which empaneled the grand jury shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which upon

receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one; or

(i) prior to the filing of an accusatory instrument in a local criminal court against such person, the prosecutor elects not to prosecute such person. In such event, the prosecutor shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

(j) following the arrest of such person, the arresting police agency, prior to the filing of an accusatory instrument in a local criminal court but subsequent to the forwarding of a copy of the fingerprints of such person to the division of criminal justice services, elects not to proceed further. In such event, the head of the arresting police agency shall serve a certification of such disposition upon the division of criminal justice services which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

(k) (i) The accusatory Instrument alleged a violation of article two hundred twenty or section 240.36 of the penal law, prior to the taking effect of article two hundred twenty-one of the penal law, or a violation of article two hundred twenty-one of the penal law; (ii) the sole controlled substance involved is marijuana; (iii) the conviction was only for a violation or violations; and (iv) at least three years have passed since the offense occurred.

(l) An order dismissing an action pursuant to section 215.40 of this chapter was entered.

4. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (a) through (h) of subdivision two of this section, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not

less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (i) or (j) of subdivision two of this section, prior to the effective date of this section, may apply to the appropriate prosecutor or police agency for a certification as described in said paragraph (i) or (j) granting to such person the relief set forth therein, and such certification shall be granted by such prosecutor or police agency.

S 160.55 **Order upon termination of criminal action by conviction for noncriminal offense; entry of waiver; administrative findings.**

1. Upon the termination of a criminal action or proceeding against a person by the conviction of such person of a traffic infraction or a violation, other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, unless the district attorney upon motion with not less than five days notice to such person or his or her attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his or her attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated by such conviction. Upon receipt of notification of such termination:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, and all duplicates and copies thereof, except a

digital fingerprint image where authorized pursuant to paragraph (e) of this subdivision, except for the palmprints and fingerprints concerning a disposition of harassment in the second degree as defined in section 240.26 of the penal law, committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, and determined pursuant to subdivision eight-a of section 170.10 of this title, shall forthwith be, at the discretion of the recipient agency, either destroyed or returned to such person, or to the attorney who represented such person at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprints or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, shall forthwith formally request in writing that all such copies be destroyed or returned to the police department or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall, at its discretion, either destroy or return them as provided herein;

(c) all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency;

(d) the records referred to in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the

satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of parole and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (vi) a police agency, probation department, sheriff's office, district attorney's office, department of correction of any municipality and parole department, for law enforcement purposes, upon arrest in instances in which the individual stands convicted of harassment in the second degree, as defined in section 240.26 of the penal law, committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, and determined pursuant to subdivision eight-a of section 170.10 of this title; and

(e) where fingerprints subject to the provisions of this section have been received by the division of criminal justice services and have been filed by the division as digital images, such images may be retained, provided that a fingerprint card of the individual is on file with the division which was not sealed pursuant to this section or section 160.50 of this article.

2. A report of the termination of the action or proceeding by conviction of a traffic violation or a violation other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this title or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, shall be sufficient notice of sealing to the commissioner of the division of criminal justice services unless the report also indicates that the court directed that the record not be sealed in the interests of justice. Where the court has determined pursuant to subdivision one of

this section that sealing is not in the interests of justice, the clerk of the court shall include notification of that determination in any report to such division of the disposition of the action or proceeding. When the defendant has been found guilty of a violation of harassment in the second degree and it was determined pursuant to subdivision eight-a of section 170.10 of this title that such violation was committed against a member of the same family or household as the defendant, the clerk of the court shall include notification of that determination in any report to such division of the disposition of the action or proceeding for purposes of paragraph (a) and subparagraph (vi) of paragraph (d) of subdivision one of this section.

3. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

4. This section shall not apply to an action terminated in a manner described in paragraph (k) of subdivision two of section 160.50 of this chapter.

5. (a) When a criminal action or proceeding is terminated against a person by the entry of a waiver of a hearing pursuant to paragraph (c) of subdivision ten of section eleven hundred ninety-two of the vehicle and traffic law or section forty-nine-b of the navigation law, the record of the criminal action shall be sealed in accordance with this subdivision. Upon the entry of such waiver, the court or the clerk of the court shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that a waiver has been

entered and that the record of the action shall be sealed when the person reaches the age of twenty-one or three years from the date of commission of the offense, whichever is the greater period of time. At the expiration of such period, the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies shall take the actions required by paragraphs (a), (b) and (c) of subdivision one of section 160.50 of this article.

(b) Where a person under the age of twenty-one is referred by the police to the department of motor vehicles for action pursuant to section eleven hundred ninety-two-a or eleven hundred ninety-four-a of the vehicle and traffic law, or section forty-nine-b of the navigation law and a finding in favor of the motorist or operator is rendered, the commissioner of the department of motor vehicles shall, as soon as practicable, but not later than three years from the date of commission of the offense or when such person reaches the age of twenty-one, whichever is the greater period of time, notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that such finding in favor of the motorist or operator was rendered. Upon receipt of such notification, the commissioner of the division of criminal justice services and the heads of such police departments and other law enforcement agencies shall take the actions required by paragraphs (a), (b) and (c) of subdivision one of section 160.50 of this article.

(c) Where a person under the age of twenty-one is referred by the police to the department of motor vehicles for action pursuant to section eleven hundred ninety-two-a or eleven hundred ninety-four-a of the vehicle and traffic law, or section forty-nine-b of the navigation law, and no notification is received by the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies pursuant to paragraph (b) of this subdivision, such commissioner of the division of criminal justice services and such heads of police departments and other law enforcement agencies shall, after three years from the date of commission of the offense or when the person reaches the age of twenty-one, whichever is the greater period of time, take the actions

required by paragraphs (a), (b) and (c) of subdivision one of section 160.50 of this article.

S 160.58 **Conditional sealing of certain controlled substance, marihuana or specified offense convictions.**

1. A defendant convicted of any offense defined in article two hundred twenty or two hundred twenty-one of the penal law or a specified offense defined in subdivision five of section 410.91 of this chapter who has successfully completed a judicial diversion program under article two hundred sixteen of this chapter, or one of the programs heretofore known as drug treatment alternative to prison or another judicially sanctioned drug treatment program of similar duration, requirements and level of supervision, and has completed the sentence imposed for the offense or offenses, is eligible to have such offense or offenses sealed pursuant to this section.

2. The court that sentenced the defendant to a judicially sanctioned drug treatment program may on its own motion, or on the defendant's motion, order that all official records and papers relating to the arrest, prosecution and conviction which resulted in the defendant's participation in the judicially sanctioned drug treatment program be conditionally sealed. In such case, the court may also conditionally seal the arrest, prosecution and conviction records for no more than three of the defendant's prior eligible misdemeanors, which for purposes of this subdivision shall be limited to misdemeanor offenses defined in article two hundred twenty or two hundred twenty-one of the penal law. The court may only seal the records of the defendant's arrests, prosecutions and convictions when:

(a) the sentencing court has requested and received from the division of criminal justice services or the Federal Bureau of Investigation a fingerprint based criminal history record of the defendant, including any sealed or suppressed information. The division of criminal justice services shall also include a criminal history report, if any, from the Federal Bureau of Investigation regarding any criminal history information that occurred in other jurisdictions. The division is hereby authorized to receive such information from the Federal Bureau of Investigation for this purpose. The parties shall be permitted to

examine these records;

(b) the defendant or court has identified the misdemeanor conviction or convictions for which relief may be granted;

(c) the court has received documentation that the sentences imposed on the eligible misdemeanor convictions have been completed, or if no such documentation is reasonably available, a sworn affidavit that the sentences imposed on the prior misdemeanors have been completed; and

(d) the court has notified the district attorney of each jurisdiction in which the defendant has been convicted of an offense with respect to which sealing is sought, and the court or courts of record for such offenses, that the court is considering sealing the records of the defendant's eligible misdemeanor convictions. Both the district attorney and the court shall be given a reasonable opportunity, which shall not be less than thirty days, in which to comment and submit materials to aid the court in making such a determination.

3. At the request of the defendant or the district attorney of a county in which the defendant committed a crime that is the subject of the sealing application, the court may conduct a hearing to consider and review any relevant evidence offered by either party that would aid the court in its decision whether to seal the records of the defendant's arrests, prosecutions and convictions. In making such a determination, the court shall consider any relevant factors, including but not limited to: (i) the circumstances and seriousness of the offense or offenses that resulted in the conviction or convictions; (ii) the character of the defendant, including his or her completion of the judicially sanctioned treatment program as described in subdivision one of this section; (iii) the defendant's criminal history; and (iv) the impact of sealing the defendant's records upon his or her rehabilitation and his or her successful and productive reentry and reintegration into society, and on public safety.

4. When a court orders sealing pursuant to this section, all official records and papers relating to the arrests, prosecutions, and convictions, including all duplicates and copies thereof, on file with the division of criminal justice services or any court shall be sealed and not made available to any person or public or private agency; provided, however, the division shall retain any fingerprints,

palmprints and photographs, or digital images of the same.

5. When the court orders sealing pursuant to this section, the clerk of such court shall immediately notify the commissioner of the division of criminal justice services, and any court that sentenced the defendant for an offense which has been conditionally sealed, regarding the records that shall be sealed pursuant to this section.

6. Records sealed pursuant to this subdivision shall be made available to:

(a) the defendant or the defendant's designated agent;

(b) qualified agencies, as defined in subdivision nine of section eight hundred thirty-five of the executive law, and federal and state law enforcement agencies, when acting within the scope of their law enforcement duties; or

(c) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license; or

(d) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto.

7. The court shall not seal the defendant's record pursuant to this section while any charged offense is pending.

8. If, subsequent to the sealing of records pursuant to this subdivision, the person who is the subject of such records is arrested for or formally charged with any misdemeanor or felony offense, such records shall be unsealed immediately and remain unsealed; provided, however, that if such new misdemeanor or felony arrest results in a termination in favor of the accused as defined in subdivision three of section 160.50 of this article or by conviction for a non criminal offense as described in section 160.55 of this article, such unsealed records shall be conditionally sealed pursuant to this section.

S 160.60 **Effect of termination of criminal actions in favor of the accused.**

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution. The arrest or prosecution shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.

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Article 170 - NY Criminal Procedure Law

PROCEEDINGS UPON INFORMATION, SIMPLIFIED TRAFFIC INFORMATION, PROSECUTOR`S INFORMATION AND MISDEMEANOR COMPLAINT FROM ARRAIGNMENT TO PLEA

Section	Description
170.10	Arraignment upon information, simplified traffic information, prosecutor`s information or misdemeanor complaint; defendant`s presence, defendant`s rights, court`s instructions and bail matters.
170.15	Removal of action from one local criminal court to another.
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Section	Description
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170.35	Motion to dismiss information, simplified information, prosecutor`s information or misdemeanor complaint;as defective.
170.40	Motion to dismiss information, simplified traffic information, prosecutor`s information or misdemeanor complaint; in furtherance of justice.
170.45	Motion to dismiss information, simplified traffic information, prosecutor`s information or misdemeanor complaint; procedure.
170.50	Motion in superior court to dismiss prosecutor`s information.
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170.80	Proceedings regarding certain prostitution charges; certain persons aged sixteen or seventeen.

S 170.10 Arraignment upon information, simplified traffic information, prosecutor`s information or misdemeanor complaint; defendant`s presence, defendant`s rights, court`s instructions and bail matters.

1. Following the filing with a local criminal court of an information, a simplified information, a prosecutor's information or a misdemeanor complaint, the defendant must be arraigned thereon. The defendant must appear personally at such arraignment except under the following circumstances:

(a) In any case where a simplified information is filed and a procedure is provided by law which is applicable to all offenses charged in such simplified information and, if followed, would dispense with an

S 170.50 **Motion in superior court to dismiss prosecutor`s information.**

1. At any time after arraignment in a local criminal court upon a prosecutor's information filed at the direction of a grand jury and before entry of a plea of guilty thereto or commencement of a trial thereof, the local criminal court wherein the prosecutor's information is filed may, upon motion of the defendant, dismiss such prosecutor's information or a count thereof upon the ground that:

(a) The evidence before the grand jury was not legally sufficient to support the charge; or

(b) The grand jury proceeding resulting in the filing of such prosecutor's information was defective.

2. The criteria and procedures for consideration and disposition of such motion are the same as those prescribed in sections 210.30 and 210.35, governing consideration and disposition of a motion to dismiss an indictment on the ground of insufficiency of grand jury evidence or of a defective grand jury proceeding; and, where appropriate, the general procedural rules prescribed in section 210.45 for consideration and disposition of a motion to dismiss an indictment are also applicable.

3. Upon dismissing a prosecutor's information or a count thereof pursuant to this section, the court may, upon application of the people, in its discretion authorize the people to resubmit the charge or charges to the same or another grand jury. In the absence of such authorization, such charge or charges may not be resubmitted to a grand jury. The rules prescribed in subdivisions eight and nine of section 210.45 concerning the discharge of a defendant from custody or exoneration of bail in the absence of an authorization to resubmit an indictment to a grand jury, and concerning the issuance of a securing order and the effective period thereof where such an authorization is issued, apply equally where a prosecutor's information is dismissed pursuant to this section.

S 170.55 **Adjournment in contemplation of dismissal.**

1. Upon or after arraignment in a local criminal court upon an information, a simplified information, a prosecutor's information or a

misdemeanor complaint, and before entry of a plea of guilty thereto or commencement of a trial thereof, the court may, upon motion of the people or the defendant and with the consent of the other party, or upon the court's own motion with the consent of both the people and the defendant, order that the action be "adjourned in contemplation of dismissal," as prescribed in subdivision two.

2. An adjournment in contemplation of dismissal is an adjournment of the action without date ordered with a view to ultimate dismissal of the accusatory instrument in furtherance of justice. Upon issuing such an order, the court must release the defendant on his own recognizance. Upon application of the people, made at any time not more than six months, or in the case of a family offense as defined in subdivision one of section 530.11 of this chapter, one year, after the issuance of such order, the court may restore the case to the calendar upon a determination that dismissal of the accusatory instrument would not be in furtherance of justice, and the action must thereupon proceed. If the case is not so restored within such six months or one year period, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed by the court in furtherance of justice.

3. In conjunction with an adjournment in contemplation of dismissal the court may issue a temporary order of protection pursuant to section 530.12 or 530.13 of this chapter, requiring the defendant to observe certain specified conditions of conduct.

4. Where the local criminal court information, simplified information, prosecutor's information, or misdemeanor complaint charges a crime or violation between spouses or between parent and child, or between members of the same family or household, as the term "members of the same family or household" is defined in subdivision one of section 530.11 of this chapter, the court may as a condition of an adjournment in contemplation of dismissal order, require that the defendant participate in an educational program addressing the issues of spousal abuse and family violence.

5. The court may grant an adjournment in contemplation of dismissal on condition that the defendant participate in dispute resolution and comply with any award or settlement resulting therefrom.

6. The court may as a condition of an adjournment in contemplation of

dismissal order, require the defendant to perform services for a public or not-for-profit corporation, association, institution or agency. Such condition may only be imposed where the defendant has consented to the amount and conditions of such service. The court may not impose such conditions in excess of the length of the adjournment.

6-a. The court may, as a condition of an authorized adjournment in contemplation of dismissal, where the defendant has been charged with an offense and the elements of such offense meet the criteria of an "eligible offense" and such person qualified as an "eligible person" as such terms are defined in section four hundred fifty-eight-l of the social services law, require the defendant to participate in an education reform program in accordance with section four hundred fifty-eight-l of the social services law.

7. The court may, as a condition of an adjournment in contemplation of dismissal order, where a defendant is under twenty-one years of age and is charged with (a) a misdemeanor or misdemeanors other than section eleven hundred ninety-two of the vehicle and traffic law, in which the record indicates the consumption of alcohol by the defendant may have been a contributing factor, or (b) a violation of paragraph (a) of subdivision one of section sixty-five-b of the alcoholic beverage control law, require the defendant to attend an alcohol awareness program established pursuant to subdivision (a) of section 19.07 of the mental hygiene law.

8. The granting of an adjournment in contemplation of dismissal shall not be deemed to be a conviction or an admission of guilt. No person shall suffer any disability or forfeiture as a result of such an order. Upon the dismissal of the accusatory instrument pursuant to this section, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution.

9. Notwithstanding any other provision of this section, a court may not issue an order adjourning an action in contemplation of dismissal if the offense is for a violation of the vehicle and traffic law related to the operation of a motor vehicle (except one related to parking, stopping or standing), or a violation of a local law, rule or ordinance related to the operation of a motor vehicle (except one related to

parking, stopping or standing), if such offense was committed by the holder of a commercial driver's license or was committed in a commercial motor vehicle, as defined in subdivision four of section five hundred one-a of the vehicle and traffic law.

S 170.56 Adjournment in contemplation of dismissal in cases involving marihuana.

1. Upon or after arraignment in a local criminal court upon an information, a prosecutor's information or a misdemeanor complaint, where the sole remaining count or counts charge a violation or violations of section 221.05, 221.10, 221.15, 221.35 or 221.40 of the penal law and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary or appropriate and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent.

2. Upon ordering the action adjourned in contemplation of dismissal, the court must set and specify such conditions for the adjournment as may be appropriate, and such conditions may include placing the defendant under the supervision of any public or private agency. At any time prior to dismissal the court may modify the conditions or extend or reduce the term of the adjournment, except that the total period of adjournment shall not exceed twelve months. Upon violation of any condition fixed by the court, the court may revoke its order and restore

the case to the calendar and the prosecution thereupon must proceed. If the case is not so restored to the calendar during the period fixed by the court, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed in the furtherance of justice.

3. Upon or after dismissal of such charges against a defendant not previously convicted of a crime, the court shall order that all official records and papers, relating to the defendant's arrest and prosecution, whether on file with the court, a police agency, or the New York state division of criminal justice services, be sealed and, except as otherwise provided in paragraph (d) of subdivision one of section 160.50 of this chapter, not made available to any person or public or private agency; except, such records shall be made available under order of a court for the purpose of determining whether, in subsequent proceedings, such person qualifies under this section for a dismissal or adjournment in contemplation of dismissal of the accusatory instrument.

4. Upon the granting of an order pursuant to subdivision three, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution.

S 170.60 **Requirement of plea to information, simplified information or prosecutor`s information.**

Unless an information, a simplified information or a prosecutor`s information is dismissed or the criminal action thereon terminated or abated pursuant to a provision of this article or some other provision of law, the defendant must be required to enter a plea thereto.

S 170.65 **Replacement of misdemeanor complaint by information and waiver thereof.**

1. A defendant against whom a misdemeanor complaint is pending is not required to enter a plea thereto. For purposes of prosecution, such instrument must, except as provided in subdivision three, be replaced by an information, and the defendant must be arraigned thereon. If the misdemeanor complaint is supplemented by a supporting deposition and such instruments taken together satisfy the requirements for a valid information, such misdemeanor complaint is deemed to have been converted

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Article 215 - NY Criminal Procedure Law

ADJOURNMENT IN CONTEMPLATION OF DISMISSAL FOR PURPOSES OF REFERRING SELECTED FELONIES TO DISPUTE RESOLUTION

S 215.10 Referral of selected felonies to dispute resolution.

Upon or after arraignment in a local criminal court upon a felony complaint, or upon or after arraignment in a superior court upon an

indictment or superior court information, and before final disposition thereof, the court, with the consent of the people and of the defendant, and with reasonable notice to the victim and an opportunity for the victim to be heard, may order that the action be adjourned in contemplation of dismissal, for the purpose of referring the action to a community dispute center established pursuant to article twenty-one-A of the judiciary law. Provided, however, that the court may not order any action adjourned in contemplation of dismissal if the defendant is charged therein with: (i) a class A felony, or (ii) a violent felony offense as defined in section 70.02 of the penal law, or (iii) any drug offense as defined in article two hundred twenty of the penal law, or (iv) a felony upon the conviction of which defendant must be sentenced as a second felony offender, a second violent felony offender, or a persistent violent felony offender pursuant to sections 70.06, 70.04 and 70.08 of the penal law, or a felony upon the conviction of which defendant may be sentenced as a persistent felony offender pursuant to section 70.10 of such law.

S 215.20 **Victim; definition.**

For purposes of section 215.10 of this article, "victim" means any person alleged to have sustained physical or financial injury to person or property as a direct result of the crime or crimes charged in a felony complaint, superior court information, or indictment.

S 215.30 **Adjournment in contemplation of dismissal; restoration to calendar; dismissal of action.**

Upon issuing an order adjourning an action in contemplation of dismissal pursuant to section 215.10 of this article, the court must release the defendant on his own recognizance and refer the action to a dispute resolution center established pursuant to article twenty-one-A of the judiciary law. No later than forty-five days after an action has been referred to a dispute resolution center, such center must advise the district attorney as to whether the charges against defendant have been resolved. Thereafter, if defendant has agreed to pay a fine, restitution or reparation, the district attorney must be advised every thirty days as to the status of such fine, restitution or reparation.

Upon application of the people, made at any time not more than six months after the issuance of an order adjourning an action in contemplation of dismissal, the court may restore the action to the calendar upon a determination that dismissal of the accusatory instrument would not be in furtherance of justice, and the action must thereupon proceed. Notwithstanding the foregoing, where defendant has agreed to pay a fine, restitution, or reparation, but has not paid such fine, restitution or reparation, upon application of the people, made at any time not more than one year after the issuance of an order adjourning an action in contemplation of dismissal, the court may restore the action to the calendar upon a determination that defendant has failed to pay such fine, restitution, or reparation, and the action must thereupon proceed.

S 215.40 **Dismissal of action; effect thereof; records.**

If an action has not been restored to the calendar within six months, or where the defendant has agreed to pay a fine, restitution or reparation but has not paid such fine, restitution or reparation, within one year, of the issuance of an order adjourning the action in contemplation of dismissal, the accusatory instrument shall be deemed to have been dismissed by the court in furtherance of justice at the expiration of such six month or one year period, as the case may be. Upon dismissal of an action, the arrest and prosecution shall be deemed a nullity, and defendant shall be restored to the status he or she occupied before his or her arrest and prosecution. All papers and records relating to an action that has been dismissed pursuant to this section shall be subject to the sealing provisions of section 160.50 of this chapter.

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Article 216 - NY Criminal Procedure Law

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JUDICIAL DIVERSION PROGRAM FOR CERTAIN FELONY OFFENDERS

Section	Description
216.00	Definitions.
216.05	Judicial diversion program; court procedures.

S 216.00 **Definitions.**

The following definitions are applicable to this article:

1. "Eligible defendant" means any person who stands charged in an indictment or a superior court information with a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-one of the penal law or any other specified offense as defined in subdivision four of section 410.91 of this chapter, provided, however, a defendant is not an "eligible defendant"

if he or she:

** NB Effective until July 5, 2021*

* "Eligible defendant" means any person who stands charged in an indictment or a superior court information with a class B, C, D or E felony offense defined in article two hundred twenty or two hundred twenty-one of the penal law or any other specified offense as defined in subdivision four of section 410.91 of this chapter, provided, however, a defendant is not an "eligible defendant" if he or she:

** NB Effective July 5, 2021*

(a) within the preceding ten years, excluding any time during which the offender was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony, has previously been convicted of: (i) a violent felony offense as defined in section 70.02 of the penal law or (ii) any other offense for which a merit time allowance is not available pursuant to subparagraph (ii) of paragraph (d) of subdivision one of section eight hundred three of the correction law, or (iii) a class A felony offense defined in article two hundred twenty of the penal law; or

(b) has previously been adjudicated a second violent felony offender pursuant to section 70.04 of the penal law or a persistent violent felony offender pursuant to section 70.08 of the penal law.

A defendant who also stands charged with a violent felony offense as defined in section 70.02 of the penal law or an offense for which merit time allowance is not available pursuant to subparagraph (ii) of paragraph (d) of subdivision one of section eight hundred three of the correction law for which the court must, upon the defendant's conviction thereof, sentence the defendant to incarceration in state prison is not an eligible defendant while such charges are pending. A defendant who is excluded from the judicial diversion program pursuant to this paragraph or paragraph (a) or (b) of this subdivision may become an eligible defendant upon the prosecutor's consent.

2. "Alcohol and substance abuse evaluation" means a written assessment and report by a court-approved entity or licensed health care professional experienced in the treatment of alcohol and substance abuse, or by an addiction and substance abuse counselor credentialed by the office of alcoholism and substance abuse services pursuant to

section 19.07 of the mental hygiene law, which shall include:

(a) an evaluation as to whether the defendant has a history of alcohol or substance abuse or alcohol or substance dependence, as such terms are defined in the diagnostic and statistical manual of mental disorders, fourth edition, and a co-occurring mental disorder or mental illness and the relationship between such abuse or dependence and mental disorder or mental illness, if any;

(b) a recommendation as to whether the defendant's alcohol or substance abuse or dependence, if any, could be effectively addressed by judicial diversion in accordance with this article;

(c) a recommendation as to the treatment modality, level of care and length of any proposed treatment to effectively address the defendant's alcohol or substance abuse or dependence and any co-occurring mental disorder or illness; and

(d) any other information, factor, circumstance, or recommendation deemed relevant by the assessing entity or specifically requested by the court.

S 216.05 **Judicial diversion program; court procedures.**

1. At any time after the arraignment of an eligible defendant, but prior to the entry of a plea of guilty or the commencement of trial, the court at the request of the eligible defendant, may order an alcohol and substance abuse evaluation. An eligible defendant may decline to participate in such an evaluation at any time. The defendant shall provide a written authorization, in compliance with the requirements of any applicable state or federal laws, rules or regulations authorizing disclosure of the results of the assessment to the defendant's attorney, the prosecutor, the local probation department, the court, authorized court personnel and other individuals specified in such authorization for the sole purpose of determining whether the defendant should be offered judicial diversion for treatment for substance abuse or dependence, alcohol abuse or dependence and any co-occurring mental disorder or mental illness.

2. Upon receipt of the completed alcohol and substance abuse evaluation report, the court shall provide a copy of the report to the eligible defendant and the prosecutor.

3. (a) Upon receipt of the evaluation report either party may request a hearing on the issue of whether the eligible defendant should be offered alcohol or substance abuse treatment pursuant to this article. At such a proceeding, which shall be held as soon as practicable so as to facilitate early intervention in the event that the defendant is found to need alcohol or substance abuse treatment, the court may consider oral and written arguments, may take testimony from witnesses offered by either party, and may consider any relevant evidence including, but not limited to, evidence that:

(i) the defendant had within the preceding ten years (excluding any time during which the offender was incarcerated for any reason between the time of the acts that led to the youthful offender adjudication and the time of commission of the present offense) been adjudicated a youthful offender for: (A) a violent felony offense as defined in section 70.02 of the penal law; or (B) any offense for which a merit time allowance is not available pursuant to subparagraph (ii) of paragraph (d) of subdivision one of section eight hundred three of the correction law; and

(ii) in the case of a felony offense defined in subdivision four of section 410.91 of this chapter, any statement of or submitted by the victim, as defined in paragraph (a) of subdivision two of section 380.50 of this chapter.

(b) Upon completion of such a proceeding, the court shall consider and make findings of fact with respect to whether:

(i) the defendant is an eligible defendant as defined in subdivision one of section 216.00 of this article;

(ii) the defendant has a history of alcohol or substance abuse or dependence;

(iii) such alcohol or substance abuse or dependence is a contributing factor to the defendant's criminal behavior;

(iv) the defendant's participation in judicial diversion could effectively address such abuse or dependence; and

(v) institutional confinement of the defendant is or may not be necessary for the protection of the public.

4. When an authorized court determines, pursuant to paragraph (b) of subdivision three of this section, that an eligible defendant should be

offered alcohol or substance abuse treatment, or when the parties and the court agree to an eligible defendant's participation in alcohol or substance abuse treatment, an eligible defendant may be allowed to participate in the judicial diversion program offered by this article. Prior to the court's issuing an order granting judicial diversion, the eligible defendant shall be required to enter a plea of guilty to the charge or charges; provided, however, that no such guilty plea shall be required when:

(a) the people and the court consent to the entry of such an order without a plea of guilty; or

(b) based on a finding of exceptional circumstances, the court determines that a plea of guilty shall not be required. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe collateral consequences.

5. The defendant shall agree on the record or in writing to abide by the release conditions set by the court, which, shall include: participation in a specified period of alcohol or substance abuse treatment at a specified program or programs identified by the court, which may include periods of detoxification, residential or outpatient treatment, or both, as determined after taking into account the views of the health care professional who conducted the alcohol and substance abuse evaluation and any health care professionals responsible for providing such treatment or monitoring the defendant's progress in such treatment; and may include: (i) periodic court appearances, which may include periodic urinalysis; (ii) a requirement that the defendant refrain from engaging in criminal behaviors.

6. Upon an eligible defendant's agreement to abide by the conditions set by the court, the court shall issue a securing order providing for bail or release on the defendant's own recognizance and conditioning any release upon the agreed upon conditions. The period of alcohol or substance abuse treatment shall begin as specified by the court and as soon as practicable after the defendant's release, taking into account the availability of treatment, so as to facilitate early intervention with respect to the defendant's abuse or condition and the effectiveness of the treatment program. In the event that a treatment program is not

immediately available or becomes unavailable during the course of the defendant's participation in the judicial diversion program, the court may release the defendant pursuant to the securing order.

7. When participating in judicial diversion treatment pursuant to this article, any resident of this state who is covered under a private health insurance policy or contract issued for delivery in this state pursuant to article thirty-two, forty-three or forty-seven of the insurance law or article forty-four of the public health law, or who is covered by a self-funded plan which provides coverage for the diagnosis and treatment of chemical abuse and chemical dependence however defined in such policy; shall first seek reimbursement for such treatment in accordance with the provisions of such policy or contract.

8. During the period of a defendant's participation in the judicial diversion program, the court shall retain jurisdiction of the defendant, provided, however, that the court may allow such defendant to reside in another jurisdiction while participating in a judicial diversion program under conditions set by the court and agreed to by the defendant pursuant to subdivisions five and six of this section. The court may require the defendant to appear in court at any time to enable the court to monitor the defendant's progress in alcohol or substance abuse treatment. The court shall provide notice, reasonable under the circumstances, to the people, the treatment provider, the defendant and the defendant's counsel whenever it orders or otherwise requires the appearance of the defendant in court. Failure to appear as required without reasonable cause therefor shall constitute a violation of the conditions of the court's agreement with the defendant.

9. (a) If at any time during the defendant's participation in the judicial diversion program, the court has reasonable grounds to believe that the defendant has violated a release condition or has failed to appear before the court as requested, the court shall direct the defendant to appear or issue a bench warrant to a police officer or an appropriate peace officer directing him or her to take the defendant into custody and bring the defendant before the court without unnecessary delay. The provisions of subdivision one of section 530.60 of this chapter relating to revocation of recognizance or bail shall apply to such proceedings under this subdivision.

(b) In determining whether a defendant violated a condition of his or her release under the judicial diversion program, the court may conduct a summary hearing consistent with due process and sufficient to satisfy the court that the defendant has, in fact, violated the condition.

(c) If the court determines that the defendant has violated a condition of his or her release under the judicial diversion program, the court may modify the conditions thereof, reconsider the order of recognizance or bail pursuant to subdivision two of section 510.30 of this chapter, or terminate the defendant's participation in the judicial diversion program; and when applicable proceed with the defendant's sentencing in accordance with the agreement. Notwithstanding any provision of law to the contrary, the court may impose any sentence authorized for the crime of conviction in accordance with the plea agreement, or any lesser sentence authorized to be imposed on a felony drug offender pursuant to paragraph (b) or (c) of subdivision two of section 70.70 of the penal law taking into account the length of time the defendant spent in residential treatment and how best to continue treatment while the defendant is serving that sentence. In determining what action to take for a violation of a release condition, the court shall consider all relevant circumstances, including the views of the prosecutor, the defense and the alcohol or substance abuse treatment provider, and the extent to which persons who ultimately successfully complete a drug treatment regimen sometimes relapse by not abstaining from alcohol or substance abuse or by failing to comply fully with all requirements imposed by a treatment program. The court shall also consider using a system of graduated and appropriate responses or sanctions designed to address such inappropriate behaviors, protect public safety and facilitate, where possible, successful completion of the alcohol or substance abuse treatment program.

(d) Nothing in this subdivision shall be construed as preventing a court from terminating a defendant's participation in the judicial diversion program for violating a release condition when such a termination is necessary to preserve public safety. Nor shall anything in this subdivision be construed as precluding the prosecution of a defendant for the commission of a different offense while participating in the judicial diversion program.

(e) A defendant may at any time advise the court that he or she wishes to terminate participation in the judicial diversion program, at which time the court shall proceed with the case and, where applicable, shall impose sentence in accordance with the plea agreement. Notwithstanding any provision of law to the contrary, the court may impose any sentence authorized for the crime of conviction in accordance with the plea agreement, or any lesser sentence authorized to be imposed on a felony drug offender pursuant to paragraph (b) or (c) of subdivision two of section 70.70 of the penal law taking into account the length of time the defendant spent in residential treatment and how best to continue treatment while the defendant is serving that sentence.

10. Upon the court's determination that the defendant has successfully completed the required period of alcohol or substance abuse treatment and has otherwise satisfied the conditions required for successful completion of the judicial diversion program, the court shall comply with the terms and conditions it set for final disposition when it accepted the defendant's agreement to participate in the judicial diversion program. Such disposition may include, but is not limited to: (a) requiring the defendant to undergo a period of interim probation supervision and, upon the defendant's successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea and dismissing the indictment; or (b) requiring the defendant to undergo a period of interim probation supervision and, upon successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea, enter a guilty plea to a misdemeanor offense and sentencing the defendant as promised in the plea agreement, which may include a period of probation supervision pursuant to section 65.00 of the penal law; or (c) allowing the defendant to withdraw his or her guilty plea and dismissing the indictment.

11. Nothing in this article shall be construed as restricting or prohibiting courts or district attorneys from using other lawful procedures or models for placing appropriate persons into alcohol or substance abuse treatment.

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Article 720 - NY Criminal Procedure Law

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YOUTHFUL OFFENDER PROCEDURE

Section	Description
720.10	Youthful offender procedure; definition of terms.
720.15	Youthful offender procedure; sealing of accusatory instrument; privacy of proceedings; preliminary instructions to jury.
720.20	Youthful offender determination; when and how made; procedure thereupon.
720.25	Youthful offender adjudication; certain exemptions.
720.30	Youthful offender adjudication; post-judgment motions and appeal.
720.35	Youthful offender adjudication; effect thereof; records.

S 720.10 **Youthful offender procedure; definition of terms.**

As used in this article, the following terms have the following meanings:

1. "Youth" means a person charged with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.

2. "Eligible youth" means a youth who is eligible to be found a youthful offender. Every youth is so eligible unless:

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or

(b) such youth has previously been convicted and sentenced for a felony, or

(c) such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen hundred seventy-eight a juvenile delinquent who committed a designated felony act as defined in the family court act.

3. Notwithstanding the provisions of subdivision two, a youth who has been convicted of an armed felony offense or of rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse is an eligible youth if the court determines that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of

subdivision three of section eight hundred thirty-seven-a of the executive law.

4. "Youthful offender finding" means a finding, substituted for the conviction of an eligible youth, pursuant to a determination that the eligible youth is a youthful offender.

5. "Youthful offender sentence" means the sentence imposed upon a youthful offender finding.

6. "Youthful offender adjudication". A youthful offender adjudication is comprised of a youthful offender finding and the youthful offender sentence imposed thereon and is completed by imposition and entry of the youthful offender sentence.

S 720.15 **Youthful offender procedure; sealing of accusatory instrument; privacy of proceedings; preliminary instructions to jury.**

1. When an accusatory instrument against an apparently eligible youth is filed with a court, it shall be filed as a sealed instrument, though only with respect to the public.

2. When a youth is initially arraigned upon an accusatory instrument, such arraignment and all proceedings in the action thereafter may, in the discretion of the court and with the defendant's consent, be conducted in private.

3. The provisions of subdivisions one and two of this section requiring or authorizing the accusatory instrument filed against a youth to be sealed, and the arraignment and all proceedings in the action to be conducted in private shall not apply in connection with a pending charge of committing any felony offense as defined in the penal law. The provisions of subdivision one requiring the accusatory instrument filed against a youth to be sealed shall not apply where such youth has previously been adjudicated a youthful offender or convicted of a crime.

4. Notwithstanding any provision in this article, a person charged with prostitution as defined in section 230.00 of the penal law or loitering for the purposes of prostitution as defined in subdivision two of section 240.37 of the penal law, provided that the person does not stand charged with loitering for the purpose of patronizing a prostitute, and such person is aged sixteen or seventeen when such offense occurred, regardless of whether such person (i) had prior to

commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, or (ii) subsequent to such conviction for prostitution or loitering for prostitution is convicted of a crime or found a youthful offender, the provisions of subdivisions one and two of this section requiring or authorizing the accusatory instrument filed against a youth to be sealed, and the arraignment and all proceedings in the action to be conducted in private shall apply.

S 720.20 **Youthful offender determination; when and how made; procedure thereupon.**

1. Upon conviction of an eligible youth, the court must order a pre-sentence investigation of the defendant. After receipt of a written report of the investigation and at the time of pronouncing sentence the court must determine whether or not the eligible youth is a youthful offender. Such determination shall be in accordance with the following criteria:

(a) If in the opinion of the court the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and by not imposing an indeterminate term of imprisonment of more than four years, the court may, in its discretion, find the eligible youth is a youthful offender; and

(b) Where the conviction is had in a local criminal court and the eligible youth had not prior to commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, the court must find he is a youthful offender.

2. Where an eligible youth is convicted of two or more crimes set forth in separate counts of an accusatory instrument or set forth in two or more accusatory instruments consolidated for trial purposes, the court must not find him a youthful offender with respect to any such conviction pursuant to subdivision one of this section unless it finds him a youthful offender with respect to all such convictions.

3. Upon determining that an eligible youth is a youthful offender, the court must direct that the conviction be deemed vacated and replaced by a youthful offender finding; and the court must sentence the defendant pursuant to section 60.02 of the penal law.

4. Upon determining that an eligible youth is not a youthful

offender, the court must order the accusatory instrument unsealed and continue the action to judgment pursuant to the ordinary rules governing criminal prosecutions.

S 720.25 **Youthful offender adjudication; certain exemptions.**

Notwithstanding any inconsistent provisions of law:

1. where the court is required to find that a person is a youthful offender pursuant to section 170.80 of this chapter, the fact that such person has previously been convicted of a crime or adjudicated a youthful offender shall not prevent such person from being adjudicated a youthful offender as required by such section; and

2. a youthful offender adjudication pursuant to section 170.80 of this chapter shall not be considered in determining whether a person is an eligible youth, or in determining whether to find a person a youthful offender, in any subsequent youthful offender adjudication.

S 720.30 **Youthful offender adjudication; post-judgment motions and appeal.**

The provisions of this chapter, governing the making and determination of post-judgment motions and the taking and determination of appeals in criminal cases, apply to post-judgment motions and appeals with respect to youthful offender adjudications wherever such provisions can reasonably be so applied.

S 720.35 **Youthful offender adjudication; effect thereof; records.**

1. A youthful offender adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority but shall be deemed a conviction only for the purposes of transfer of supervision and custody pursuant to section two hundred fifty-nine-m of the executive law. A defendant for whom a youthful offender adjudication was substituted, who was originally charged with prostitution as defined in section 230.00 of the penal law or loitering for the purposes of prostitution as defined in subdivision two of section 240.37 of the penal law provided that the person does not stand charged with loitering

for the purpose of patronizing a prostitute, for an offense allegedly committed when he or she was sixteen or seventeen years of age, shall be deemed a "sexually exploited child" as defined in subdivision one of section four hundred forty-seven-a of the social services law and therefore shall not be considered an adult for purposes related to the charges in the youthful offender proceeding or a proceeding under section 170.80 of this chapter.

2. Except where specifically required or permitted by statute or upon specific authorization of the court, all official records and papers, whether on file with the court, a police agency or the division of criminal justice services, relating to a case involving a youth who has been adjudicated a youthful offender, are confidential and may not be made available to any person or public or private agency, other than the designated educational official of the public or private elementary or secondary school in which the youth is enrolled as a student provided that such local educational official shall only have made available a notice of such adjudication and shall not have access to any other official records and papers, such youth or such youth's designated agent (but only where the official records and papers sought are on file with a court and request therefor is made to that court or to a clerk thereof), an institution to which such youth has been committed, the department of corrections and community supervision and a probation department of this state that requires such official records and papers for the purpose of carrying out duties specifically authorized by law; provided, however, that information regarding an order of protection or temporary order of protection issued pursuant to section 530.12 of this chapter or a warrant issued in connection therewith may be maintained on the statewide automated order of protection and warrant registry established pursuant to section two hundred twenty-one-a of the executive law during the period that such order of protection or temporary order of protection is in full force and effect or during which such warrant may be executed. Such confidential information may be made available pursuant to law only for purposes of adjudicating or enforcing such order of protection or temporary order of protection and, where provided to a designated educational official, as defined in section 380.90 of this chapter, for purposes related to the execution of

the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision.

3. If a youth who has been adjudicated a youthful offender is enrolled as a student in a public or private elementary or secondary school the court that has adjudicated the youth as a youthful offender shall provide notification of such adjudication to the designated educational official of the school in which such youth is enrolled as a student. Such notification shall be used by the designated educational official only for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision.

4. Notwithstanding subdivision two of this section, whenever a person is adjudicated a youthful offender and the conviction that was vacated and replaced by the youthful offender finding was for a sex offense as that term is defined in article ten of the mental hygiene law, all records pertaining to the youthful offender adjudication shall be included in those records and reports that may be obtained by the commissioner of mental health or the commissioner of developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

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Criminal Procedure Law - Table of Contents

Exhibit 5

Criminal Procedure

§ 160.59 Sealing of certain convictions.

1. Definitions: As used in this section, the following terms shall have the following meanings:

(a) "Eligible offense" shall mean any crime defined in the laws of this state other than a sex offense defined in article one hundred thirty of the penal law, an offense defined in article two hundred sixty-three of the penal law, a felony offense defined in article one hundred twenty-five of the penal law, a violent felony offense defined in section 70.02 of the penal law, a class A felony offense defined in the penal law, a felony offense defined in article one hundred five of the penal law where the underlying offense is not an eligible offense, an attempt to commit an offense that is not an eligible offense if the attempt is a felony, or an offense for which registration as a sex offender is required pursuant to article six-C of the correction law. For the purposes of this section, where the defendant is convicted of more than one eligible offense, committed as part of the same criminal transaction as defined in subdivision two of section 40.10 of this chapter, those offenses shall be considered one eligible offense.

(b) "Sentencing judge" shall mean the judge who pronounced sentence upon the conviction under consideration, or if that judge is no longer sitting in a court in the jurisdiction in which the conviction was obtained, any other judge who is sitting in the criminal court where the judgment of conviction was entered.

1-a. The chief administrator of the courts shall, pursuant to section 10.40 of this chapter, prescribe a form application which may be used by a defendant to apply

for sealing pursuant to this section. Such form application shall include all the essential elements required by this section to be included in an application for sealing. Nothing in this subdivision shall be read to require a defendant to use such form application to apply for sealing.

2. (a) A defendant who has been convicted of up to two eligible offenses but not more than one felony offense may apply to the court in which he or she was convicted of the most serious offense to have such conviction or convictions sealed. If all offenses are offenses with the same classification, the application shall be made to the court in which the defendant was last convicted.

(b) An application shall contain (i) a copy of a certificate of disposition or other similar documentation for any offense for which the defendant has been convicted, or an explanation of why such certificate or other documentation is not available; (ii) a sworn statement of the defendant as to whether he or she has filed, or then intends to file, any application for sealing of any other eligible offense; (iii) a copy of any other such application that has been filed; (iv) a sworn statement as to the conviction or convictions for which relief is being sought; and (v) a sworn statement of the reason or reasons why the court should, in its discretion, grant such sealing, along with any supporting documentation.

(c) A copy of any application for such sealing shall be served upon the district attorney of the county in which the conviction, or, if more than one, the convictions, was or were obtained. The district attorney shall notify the court within forty-five days if he or she objects to the application for sealing.

(d) When such application is filed with the court, it shall be assigned to the sentencing judge unless more than one application is filed in which case the application shall be assigned to the county court or the supreme court of the county in which the criminal court is located, who shall request and receive from the division of criminal justice services a fingerprint based criminal history record of the defendant, including any sealed or suppressed records. The division of criminal justice services also shall include a criminal history report, if any, from the federal bureau of investigation regarding any criminal history information that occurred in other jurisdictions. The division is hereby authorized to receive such information from the federal bureau of investigation for this purpose, and to make such information available to the court, which may make this information available to the district attorney and the defendant.

3. The sentencing judge, or county or supreme court shall summarily deny the defendant's application when:

(a) the defendant is required to register as a sex offender pursuant to article six-C of the correction law; or

(b) the defendant has previously obtained sealing of the maximum number of convictions allowable under section 160.58 of the criminal procedure law; or

(c) the defendant has previously obtained sealing of the maximum number of convictions allowable under subdivision four of this section; or

(d) the time period specified in subdivision five of this section has not yet been satisfied; or

(e) the defendant has an undisposed arrest or charge pending; or

(f) the defendant was convicted of any crime after the date of the entry of judgement of the last conviction for which sealing is sought; or

(g) the defendant has failed to provide the court with the required sworn statement of the reasons why the court should grant the relief requested; or

(h) the defendant has been convicted of two or more felonies or more than two crimes.

4. Provided that the application is not summarily denied for the reasons set forth in subdivision three of this section, a defendant who stands convicted of up to two eligible offenses, may obtain sealing of no more than two eligible offenses but not more than one felony offense.

5. Any eligible offense may be sealed only after at least ten years have passed since the imposition of the sentence on the defendant's latest conviction or, if the defendant was sentenced to a period of incarceration, including a period of incarceration imposed in conjunction with a sentence of probation, the defendant's latest release from incarceration. In calculating the ten year period under this subdivision, any period of time the defendant spent incarcerated after

the conviction for which the application for sealing is sought, shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration.

6. Upon determining that the application is not subject to mandatory denial pursuant to subdivision three of this section and that the application is opposed by the district attorney, the sentencing judge or county or supreme court shall conduct a hearing on the application in order to consider any evidence offered by either party that would aid the sentencing judge in his or her decision whether to seal the records of the defendant's convictions. No hearing is required if the district attorney does not oppose the application.

7. In considering any such application, the sentencing judge or county or supreme court shall consider any relevant factors, including but not limited to:

(a) the amount of time that has elapsed since the defendant's last conviction;

(b) the circumstances and seriousness of the offense for which the defendant is seeking relief, including whether the arrest charge was not an eligible offense;

(c) the circumstances and seriousness of any other offenses for which the defendant stands convicted;

(d) the character of the defendant, including any measures that the defendant has taken toward rehabilitation, such as participating in treatment programs, work, or schooling, and participating in community service or other volunteer programs;

(e) any statements made by the victim of the offense for which the defendant is seeking relief;

(f) the impact of sealing the defendant's record upon his or her rehabilitation and upon his or her successful and productive reentry and reintegration into society; and

(g) the impact of sealing the defendant's record on public safety and upon the public's confidence in and respect for the law.

8. When a sentencing judge or county or supreme court orders sealing pursuant to this section, all official records and papers relating to the arrests, prosecutions, and convictions, including all duplicates and copies thereof, on file with the division of criminal justice services or any court shall be sealed and not made available to any person or public or private agency except as provided for in subdivision nine of this section; provided, however, the division shall retain any fingerprints, palmprints and photographs, or digital images of the same. The clerk of such court shall immediately notify the commissioner of the division of criminal justice services regarding the records that shall be sealed pursuant to this section. The clerk also shall notify any court in which the defendant has stated, pursuant to paragraph (b) of subdivision two of this section, that he or she has filed or intends to file an application for sealing of any other eligible offense.

9. Records sealed pursuant to this section shall be made available to:

(a) the defendant or the defendant's designated agent;

(b) qualified agencies, as defined in subdivision nine of section eight hundred thirty-five of the executive law, and federal and state law enforcement agencies, when acting within the scope of their law enforcement duties; or

(c) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license; or

(d) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto; or

(e) the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921 (a) (3).

10. A conviction which is sealed pursuant to this section is included within the definition of a conviction for the purposes of any criminal proceeding in which the fact of a prior conviction would enhance a penalty or is an element of the offense charged.

11. No defendant shall be required or permitted to waive eligibility for sealing pursuant to this section as part of a plea of guilty, sentence or any agreement related to a conviction for an eligible offense and any such waiver shall be deemed void and wholly unenforceable.

< SECTION 160.58 - CONDITIONAL SEALING OF CERTAIN CONTROLLED SUBSTANCE, MARIHUANA OR SPECIFIED OFFENSE CONVICTIONS (/LEGISLATION/LAWS/CPL/160.58/)

Exhibit 6

FORMS & INSTRUCTIONS - Application to Seal a Criminal Conviction Pursuant to CPL 160.59 after 10 Years

Steps to Prepare and File a CPL 160.59 Sealing Application

- **STEP 1:** Complete the Request for Criminal Certificate of Disposition for CPL 160.59 Sealing Application and submit it to the appropriate clerk of the court.
  Note: Complete a separate request for each case you will be asking the court to seal.
- **STEP 2:** Once you receive your criminal Certificate of Disposition from the court, complete pages 1 and 2 of the Sealing Application (i.e., Notice of Motion and Affidavit in Support).
- **STEP 3:** Serve the Notice of Motion and Affidavit in Support (i.e., pages 1 and 2 of the Sealing Application) upon the District Attorney of the applicable county. You can look up the address for each District Attorney's office in the List of District Attorneys Offices.
  Note: If you are asking the court to seal more than one conviction and convictions occurred in different counties, you must serve the District Attorney of each applicable county with copies of your papers.
- **STEP 4:** Once the District Attorney has been served, complete page 3 of the Sealing Application (i.e., Affidavit of Service).
  Note: If more than one District Attorney has been served, and the service was performed on different dates or by different people, you must complete a separate Affidavit of Service (i.e., page 3 of the Sealing Application) for each one.
- **STEP 5:** File all pages of your Sealing Application and any supporting documentation with the appropriate court.

Forms for CPL 160.59 Sealing Applications
Request for Criminal Certificate of Disposition for CPL 160.59 Sealing Application
Sealing Application: Notice of Motion and Affidavit in Support of Sealing Pursuant to CPL 160.59, Affidavit of Service and Instructions
List of District Attorneys Offices

In the Matter of the Application of:

Notice of Motion and Affidavit in Support Sealing Pursuant to CPL 160.59

❸NYSID: _____

❶Name: _____

❹Motorist ID #: (VTL Crimes) _____

❷AKA(s): _____

❺DOB: _____

This is a Notice of Motion for sealing New York State convictions pursuant to Criminal Procedure Law (CPL) 160.59. The applicant moves to seal the following case(s):

❻ Docket, Indictment, or SCI Number	❼ Court Name	❽ Conviction Charge	❾ Law/Section/Subsection	❿ Conviction Date	⓫ Sentence Date	⓬ Sentence Term	⓭ Release Date from any Incarceration

ATTACHMENTS:

⓮Applicant attaches the following documents in support of the request for sealing (applicant may attach documents related to reasons why the case(s) should be sealed, including evidence of rehabilitation, letters of recommendation, employment status, etc.):

1. Affidavit in Support of Sealing Pursuant to CPL 160.59 [see page 2].
2. Affidavit of Service on the District Attorney [see page 3].
3. Certificate of Disposition for each conviction for which I am requesting sealing.
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

APPLICANT UNDERSTANDS THE FOLLOWING PROCEDURES AND REQUIREMENTS OF THIS MOTION :

If applicant is applying to seal two cases, this motion must be filed in the court where the most serious conviction was entered. If both cases involve convictions of the same class (e.g., two class A misdemeanors or two class B misdemeanors), the motion must be filed in the court where the more recent conviction was entered.

A copy of this Notice of Motion and all supporting documents must be served on the District Attorney of each county where a conviction listed above was entered.

The District Attorney has 45 days after being served with this Notice of Motion to consider whether to consent to the sealing or to oppose the sealing.

If the District Attorney opposes the sealing, the court will conduct a hearing and consider any evidence offered by either party that would aid the court in deciding whether to seal your convictions.

Before deciding this motion, the law requires the court to have a fingerprint-based criminal history report (rap sheet), which will include any sealed or suppressed cases and any criminal history information that occurred in jurisdictions outside of New York. By filing this Notice of Motion, you are agreeing to be fingerprinted if required. When the motion is filed, the clerk of the court will provide instructions if you must be fingerprinted.

Affidavit in Support of Sealing Pursuant to CPL 160.59

The applicant states the following facts upon information and belief that they are true:

⓯ I was convicted of a crime or crimes in no more than two criminal transactions in New York State or elsewhere, and no more than one of those criminal convictions includes a conviction for a felony offense. I do not have any open or pending criminal charges against me.

⓰ I am not applying to seal any of the following offenses:

a. a sex offense defined in article one hundred thirty of the Penal Law;
b. an offense defined in article two hundred sixty-three of the Penal Law;
c. a felony offense defined in article one hundred twenty-five of the Penal Law;
d. a violent felony offense defined in section 70.02 of the Penal Law;
e. a class A felony offense defined in the Penal Law;
f. a felony offense defined in article one hundred five of the Penal Law where the underlying offense is not an eligible offense;
g. an attempt to commit an offense that is not an eligible offense if the attempt is a felony; or,
h. an offense for which registration as a sex offender is required pursuant to article six-C of the correction law.

⓱ It has been over 10 years since I was sentenced for my most recent case. I did not count any jail or prison time I served after being sentenced in calculating the 10-year period.

Moreover, the applicant, having been sworn, says:

I have attached a copy of a certificate of disposition or other similar documentation for each conviction listed above, or an explanation of why such certificate or other documentation is not available.

⓲ I ○ ***have*** ○ ***have not*** filed any other application to seal a conviction pursuant to either CPL 160.58 or CPL 160.59. If I did file another application, I have attached it to this motion.

⓳ I ○ ***do*** ○ ***do not*** intend to file any other application to seal an eligible conviction pursuant to either CPL 160.58 or CPL 160.59. If I do intend to file another application, the following conviction is the one I will ask to have sealed:

Docket/Indictment/SCI Number(s)	Court Name	Conviction Charge	Law/Section/Subsection	Charge Weight	Conviction Date	Sentence Date	Sealing Section
							○ CPL 160.58 ○ CPL 160.59

⓴ The court, in its discretion, should grant this application for sealing pursuant to CPL 160.59 for the following reasons (you must specify your reasons, which may include information about positive steps you've taken since your conviction – add additional pages if necessary):

_____

_____
Signature of Applicant

Sworn to before me this ____
day of _____, 20__

Street Address: _____
City, State & Zip: _____
Phone (optional): _____
Email (optional): _____

_____
Notary Public

Affidavit of Service

STATE OF NEW YORK
COUNTY OF _____

The undersigned, being sworn, says:

_____, is over 18 years of age and resides at:
[name of person serving/mailing]

_____.
[address of person serving/mailing]

That on _____, deponent served the within **Notice of Motion and Affidavit in Support of Sealing Pursuant to CPL 160.59** and the following supporting documents:
[date of service/mailing]

_____

upon the District Attorney(s) of the following county/counties: _____
[name(s) of county/counties]

at the following address(es): _____

_____.
[address(es) of District Attorney's office(s)]

Select one:

○ by mailing a complete copy in a properly stamped and addressed envelope at the post office or official depository of the United States Postal Service.

○ by personally delivering a complete copy to the District Attorney's Office.

_____
Signature of person serving/mailing

Sworn to before me this
day of _____, 20____

_____
Notary Public

NOTE: ***If service was made upon more than one District Attorney's office, and service was made on different dates or by different people, attach separate Affidavits of Service.***

INSTRUCTIONS

The instruction for each number below refers to the corresponding number in the **Notice of Motion and Affidavit in Support Sealing Pursuant to CPL 160.59** form. For additional help, and to find a fillable version of this form online, go to the Unified Court System's website at http://www.nycourts.gov/forms/index.shtml

1. Enter your full legal name.
2. Enter any names you are also known as (AKA) in addition to your legal name. If you used a different name than your legal name on a case you are applying to seal, make sure you also list that name.
3. Enter your New York State Identification Number (NYSID). This number can be found on the Certificate of Disposition you obtained from the court where your conviction occurred.
4. If you were convicted of a crime under the Vehicle and Traffic Law (VTL), enter your Motorist ID from your driver's license. (You will know that it is a Vehicle and Traffic Law charge if it says VTL in the conviction description on your Certificate of Disposition from the court.) If you do not have a VTL charge, you are not required to enter your Motorist ID.
5. Enter your date of birth.
6. Enter the court's docket number if you were convicted and sentenced in a city, town or village court, or enter the indictment/SCI number if you were convicted and sentenced in a supreme or county court. The case number will be in the Certificate of Disposition you get from the court.
   NOTE: If you were convicted of a charge in another case that was part of the same incident, enter the information for #6 to #13 for the related case in the same row. (e.g., You were arrested for DWI and Unauthorized Use of a Vehicle, and both crimes occurred from the same incident. You were convicted for a misdemeanor DWI in the City Court, but you were convicted for a felony Unauthorized Use of a Vehicle in the County Court.)
7. Enter the name of the court where you were convicted and sentenced. The name of the court will be on the Certificate of Disposition you get from the court.
8. Enter the name of the charge for which you were convicted and sentenced (e.g., Petit Larceny, or Burglary 3°, or Criminal Possession of a Controlled Substance 7°, etc.). The name of the conviction will be in the Certificate of Disposition you get from the court. If the Certificate of Disposition lists more than one charge in the same case, list the most serious charge.
   For example:
   - If you were sentenced for an A misdemeanor and a B misdemeanor, enter the A misdemeanor.
   - If you were sentenced for a felony and a misdemeanor, enter the felony.
   - If you were sentenced for a C felony and an E felony, enter the C felony.
   - If you were sentenced for two charges of the same weight (e.g., two A misdemeanors), enter the first charge listed in the Certificate of Disposition.
9. Enter the law, section and subsection, if any, of the charge for which you were convicted and sentenced. The law, section and subsection will be in the Certificate of Disposition you get from the court.
   For example:
   - PL 155.30(1)
   - PL 220.03
   - VTL 1192 (2-a)
10. Enter the date you were convicted. This is the date that you entered a plea or were found guilty after a trial. The conviction date will be in the Certificate of Disposition you get from the court.
11. Enter the date you were sentenced. (Some people are convicted and sentenced on the same date. Others are convicted and come back to court at a later date for sentencing.) The sentence date will be in the Certificate of Disposition you get from the court.
12. Enter the sentence you received. The sentence will be in the Certificate of Disposition you get from the court.
    For example:
    - Conditional discharge
    - 5 years probation
    - 60 days jail and 3 years probation
    - 6 months jail
    - 1-3 years state prison

⓭ If you served any time in jail or state prison after you were sentenced, enter the date you were released. If you did not serve any time in jail or state prison after you were sentenced, leave this blank.

⓮ Documents in support of sealing:

1. Affidavit in Support of Sealing Pursuant to CPL 160.59 [page 2 of this form]. The purpose of the affidavit is to provide additional information to support your motion for sealing. Make sure it is completed and attached.
2. Affidavit of Service [page 3 of this form]. The law requires you to provide a copy of your motion and supporting papers to the District Attorney in the county where you were convicted and sentenced before you file them with the court. If you are applying to seal two cases, and you were convicted and sentenced in different counties, you must send copies to the District Attorney in BOTH counties.
   NOTE: If you served two different District Attorneys, and they were served on different dates and/or by different people, you must complete and attach a separate Affidavit of Service (page 3) for each.
3. Certificate of Disposition. You must attach a Certificate of Disposition for each conviction that you are asking the court to seal. To get a Certificate of Disposition, you must contact the court where you were convicted and sentenced. If you are applying to seal two cases, you must get a Certificate of Disposition for each case. If you cannot get a Certificate of Disposition, you must attach an explanation why a Certificate of Disposition is not available. Further information about getting a Certificate of Disposition is available on the court's website.
4.-10. If you have any additional documents evidencing your rehabilitation, you should attach them. These can include documents such as a certificate of relief from civil disabilities, verification of employment, community service, volunteer or charity work; educational transcripts; letters of recommendation or commendation from employers, teachers/professors, community leaders, charitable organizations; certificates of successful completion of a drug or alcohol treatment program, etc. You are not required to submit additional supporting documents.

⓯ You are telling the court that you have not been convicted in more than two criminal cases, and that no more than one of those cases was a conviction for a felony charge.

⓰ If you were convicted of any of the crimes listed below, you are not eligible for sealing the conviction pursuant to CPL 160.59. (check your Certificate of Disposition to verify that it does not include any of the following charges). You are telling the court that you are not moving to seal any of the following:

a. PL 130.20 Sexual Misconduct; PL 130.25 Rape 3°; PL 130.30 Rape 2°; PL 130.35 Rape 1°; PL 130.40 Criminal Sexual Act 3°; PL 130.45 Criminal Sexual Act 2°; PL 130.50 Criminal Sexual Act 1°; PL 130.52 Forcible Touching; PL 130.53 Persistent Sexual Abuse; PL 130.55 Sexual Abuse 3°; PL 130.60 Sexual Abuse 2°; PL 130.65 Sexual Abuse 1°; PL 130.65-a Aggravated Sexual Abuse 4°; PL 130.66 Aggravated Sexual Abuse 3°; PL 130.67 Aggravated Sexual Abuse 2°; PL 130.70 Aggravated Sexual Abuse 1°; PL 130.75 Course of Sexual Conduct Against a Child 1°; PL 130.80 Course of Sexual Conduct Against a Child 2°; PL 130.85 Female Genital Mutilation; PL 130.90 Facilitating a Sex Offense with a Controlled Substance; PL 130.91 Sexually Motivated Felony; PL 130.95 Predatory Sexual Assault; PL 130.96 Predatory Sexual Assault Against a Child

b. PL 263.05 Use of a Child in a Sexual Performance; PL 263.10 Promoting an Obscene Sexual Performance by a Child; PL 263.11 Possessing an Obscene Sexual Performance by a Child; PL 263.15 Promoting a Sexual Performance by a Child; PL 263.16 Possessing a Sexual Performance by a Child; PL 263.30 Facilitating a Sexual Performance by a Child with a Controlled Substance or Alcohol

c. PL 125.10 Criminally Negligent Homicide; PL 125.11 Aggravated Criminally Negligent Homicide; PL 125.12 Vehicular Manslaughter 2°; PL 125.13 Vehicular Manslaughter 1°; PL 125.14 Aggravated Vehicular Homicide; PL 125.15 Manslaughter 2°; PL 125.20 Manslaughter 1°; PL 125.21 Aggravated Manslaughter 2°; PL 125.22 Aggravated Manslaughter 1°; PL 125.25 Murder 2°; PL 125.26 Aggravated Murder; PL 125.27 Murder 1°; PL 125.40 Abortion 2°; PL 125.45 Abortion 1°; PL 125.50 Self-Abortion 2°; PL 125.55 Self-Abortion 1°; PL 125.60 Issuing Abortion Articles

d. Class B violent felony offenses:
   PL 110/125.25 Attempted Murder 2°; PL 110/135.25 Attempted Kidnapping 1°; PL 110/150.20 Attempted Arson 1°; PL 125.20 Manslaughter 1°; PL 125.22 Aggravated Manslaughter 1°; PL 130.35 Rape 1°; PL 130.50 Criminal Sexual Act 1°; PL 130.70 Aggravated Sexual Abuse 1°; PL 130.75 Course of Sexual Conduct Against a Child 1°; PL 120.10 Assault 1°; PL 135.20 Kidnapping 2°; PL 140.30 Burglary 1°; PL 150.15 Arson 2°; PL 160.15 Robbery 1°; PL 230.34(5)(a)&(b) Sex Trafficking; PL 255.27 Incest 1°; PL 265.04 Criminal Possession of a Weapon 1°; PL 265.09 Criminal Use of a Firearm 1°; PL 265.13

Criminal Sale of a Firearm 1°; PL 120.11 Aggravated Assault upon a Police Officer or a Peace Officer; PL 120.07 Gang Assault 1°; PL 215.17 Intimidating a Victim or Witness 1°; PL 490.35 Hindering Prosecution of Terrorism 1°; PL 490.40 Criminal Possession of a Chemical Weapon or Biological Weapon 2°; PL 490.47 Criminal Use of a Chemical Weapon or Biological Weapon 3°;

Class C violent felony offenses:

An attempt to commit any of the Class B violent felony offenses listed above; PL 125.11 Aggravated Criminally Negligent Homicide; PL 125.21 Aggravated Manslaughter 2°; PL 130.67 Aggravated Sexual Abuse 2°; PL 120.08 Assault on a Peace Officer, Police Officer, Fireman or Emergency Medical Services Professional; PL 120.09 Assault on a Judge; PL 120.06 Gang Assault 2°; PL 121.13 Strangulation 1°; PL 140.25 Burglary 2°; PL 160.10 Robbery 2°; PL 265.03 Criminal Possession of a Weapon 2°; PL 265.08 Criminal Use of a Firearm 2°; PL 265.12 Criminal Sale of a Firearm 2°; PL 265.14 Criminal Sale of a Firearm with the Aid of a Minor; PL 265.19 Aggravated Criminal Possession of a Weapon; PL 490.15 Soliciting or Providing Support for an Act of Terrorism 1°; PL 490.30 Hindering Prosecution of Terrorism 2°; PL 490.37 Criminal Possession of a Chemical Weapon or Biological Weapon 3°;

Class D violent felony offenses:

An attempt to commit any of the Class C violent felony offenses listed above; PL 120.02 Reckless Assault of a Child; PL 120.05 Assault 2°; PL 120.18 Menacing a Police Officer or Peace Officer; PL 120.60 Stalking 1°; PL 121.12 Strangulation 2°; PL 130.30 Rape 2°; PL 130.45 Criminal Sexual Act 2°; PL 130.65 Sexual abuse 1°; PL 130.80 Course of Sexual Conduct Against a Child 2°; PL 130.66 Aggravated Sexual Abuse 3°; PL 130.90 Facilitating a Sex Offense with a Controlled Substance; PL 135.35 (3)(a)&(b) Labor Trafficking; PL 265.02 (5), (6), (7), (8), (9) or (10); PL 265.11 Criminal Sale of a Firearm 3°; PL 215.16 Intimidating a Victim or Witness 2°; PL 490.10 Soliciting or Providing Support for an Act of Terrorism 2°; PL 490.20 Making a Terroristic Threat; PL 240.60 Falsely Reporting an Incident 1°; PL 240.62 Placing a False Bomb or Hazardous Substance 1°; PL 240.63 Placing a False Bomb or Hazardous Substance in a Sports Stadium or Arena, Mass Transportation Facility or Enclosed Shopping Mall; PL 405.18 Aggravated Unpermitted Use of Indoor Pyrotechnics 1°;

Class E violent felony offenses:

PL 110/265.02 (5), (6), (7), or (8) Attempted Criminal Possession of a Weapon 3° as a lesser included offense of that section as defined in CPL 220.20; PL 130.53 Persistent Sexual Abuse; PL 130.65-a Aggravated Sexual Abuse 4°; PL 240.55 Falsely Reporting an Incident 2°; PL 240.61 Placing a False Bomb or Hazardous Substance 2°;

e. A Class A felony offense (abbreviated on your Certificate of Disposition as "AF").

f. A conviction for PL 105.10 Conspiracy 4°; PL 105.13 Conspiracy 3°; PL 105.15 Conspiracy 2°; or PL 105.17 Conspiracy 1°; when the crime you conspired to commit is one of the charges listed in this section.

g. An attempt to commit a crime is displayed on your Certificate of Disposition as "Attempted" and will have the number 110 displayed before the section and subsection (e.g., Attempted Robbery 2°; PL 110-160.10). If it is a felony level offense, the charge weight will be BF, CF, DF or EF.

h. A conviction that requires you to register as a sex offender.

⓱ Your most recent conviction and sentence must be more than ten years ago. However, if you were in jail or prison after you were sentenced, that time does not count. For example, your last conviction was 11 years ago and you served 2 years in state prison (11 – 2 = 9), that is only 9 years and you will not qualify for sealing for another year.

⓲ If you have filed another application for conditional sealing pursuant to CPL 160.58 or sealing pursuant to CPL 160.59 with this court or any other court, attach a copy of that application regardless of whether it was granted, denied or is still pending.

⓳ If you are going to file another application for conditional sealing pursuant to CPL 160.58 or sealing pursuant to CPL 160.59 with this court or any other court, list the cases that you intend to include in the application and indicate the sealing section for which you intend to apply.

⓴ You must tell the court why you believe your prior convictions should be sealed. This is your opportunity to tell the court why sealing your convictions is in the interest of justice, such as participating in treatment programs, work or schooling, or participating in community service or other volunteer programs. If you need more space, continue your comments on a separate sheet of paper.

Exhibit 7

COLLATERAL CONSEQUENCES RESOURCE CENTER

Collateral Consequences of Criminal Conviction and Restoration of Rights: News, Commentary, and Tools

New York surprises with broad new sealing law

| April 19, 2017 | CCRC Staff

Late Sunday night, the New York Senate finally passed the beleaguered 2017-18 budget bill, which was

signed by Governor Andrew Cuomo the following day. And while the passage of the bill was good news to New Yorkers eager to avoid a government shutdown, it should be even better news to a significant number of New Yorkers with criminal convictions. Tucked away inside the massive bill is an unheralded provision creating the state's first general sealing authority for adult criminal convictions. Previously, record sealing was available only for non-conviction records and diversion and drug treatment dispositions. Now sealing will be available for misdemeanors and all but the most serious felony offenses.

The new law, which takes effect in October, gives New York one of the most expansive record-closing authorities in the Nation, rivaling such traditional sealing centers as Massachusetts, Washington, and Minnesota.

Under a new § 160.59 of New York's Criminal Procedure Law, courts will have discretion to seal up to two convictions (only one of which may be a felony) for all crimes other than sex offenses and class A and violent felonies, after a 10-year waiting period (running from the date of conviction or release from prison). Sealed records will remain available to law enforcement and some licensing agencies but will be unavailable to the public.

In addition, the budget bill amended the New York Human Rights Law to cover convictions sealed under this new authority, thereby prohibiting public and private employers and occupational licensing agencies from asking about, or taking adverse action based on, a sealed conviction.

We updated our New York Guide to Restoration of Rights, Pardon, Expungement & Sealing to include the new law, and summarize below relevant portions on eligibility, procedures, standards, and effect.

Eligibility

Individuals may seek sealing for up to two eligible convictions, only one of which may be a felony. N.Y. Crim. Proc. Law § 160.59(2)(a). Multiple eligible convictions "committed as part of the same criminal transaction" are considered a single conviction. § 160.59(1)(a). Ineligible offenses include most sex offenses, all "violent felonies," and all Class A felonies. § 160.59(1)(a). Sealing is not available to individuals convicted of more than two crimes or more than one felony. § 160.59(3)(h). A 10-year waiting period applies, counted from the date of imposition of sentence, or the date of release from the latest period of incarceration (if applicable). § 160.59(5). Individuals required to register as sex offenders and individuals who have exceeded the maximum allowable number of sealings under this section or the conditional sealing authority at N.Y. Crim. Proc. Law § 160.58 (applicable to diversion/drug treatment dispositions) are ineligible, as are those with pending charges or who have been convicted subsequent to the last conviction for which sealing is sought. § 160.59(3).

Procedure

Application is made to the court where the conviction for the most serious offense sought to be sealed occurred, or to the court where the individual was last convicted if all offenses for which sealing is sought are of the same class. N.Y. Crim. Proc. Law § 160.59(2)(a). Among other requirements, the application must contain a sworn statement of reasons why sealing should be granted. § 160.59(2)(b)(v). The application is assigned to the sentencing judge if sealing is sought for a single conviction, and to the

county/supreme court otherwise. § 160.59(2)(d). The District Attorney must be served, and has 45 days to object to the application. If there is no objection, the court may decide the application without a hearing. § 160.59(6).

Standard

N.Y. Crim. Proc. sec. 160.59(7):

> *In considering any such application, the sentencing judge or county or supreme court shall consider any relevant factors, including but not limited to:*
>
> *(a) the amount of time that has elapsed since the defendant's last conviction;*
>
> *(b) the circumstances and seriousness of the offense for which the defendant is seeking relief, including whether the arrest charge was not an eligible offense;*
>
> *(c) the circumstances and seriousness of any other offenses for which the defendant stands convicted;*
>
> *(d) the character of the defendant, including any measures that the defendant has taken toward rehabilitation, such as participating in treatment programs, work, or schooling, and participating in community service or other volunteer programs;*
>
> *(e) any statements made by the victim of the offense for which the defendant is seeking relief;*
>
> *(f) the impact of sealing the defendant's record upon his or her rehabilitation and upon his or her successful and productive reentry and reintegration into society; and*

(g) the impact of sealing the defendant's record on public safety and upon the public's confidence in and respect for the law.

Effect

If sealing is granted, all "official records and papers relating to the arrests, prosecutions, and convictions, including all duplicates and copies thereof, on file with the division of criminal justice services or any court shall be sealed and not made available to any person or public or private agency." N.Y. Crim. Proc. Law § 160.59(8). Exceptions apply: The records remain available to enumerated "qualified agencies," including courts, corrections agencies, and the office of professional medical conduct; to federal and state law enforcement for law enforcement purposes; to state entities responsible for issuing firearm licenses; to employers for screening applicants for police officer/peace officer employment; and to the FBI for firearm background checks. § 160.59(9). Additionally, law enforcement fingerprint records are not affected by the sealing order. § 160.59(8). Sealed convictions remain "convictions" for the purpose of sentence enhancement or establishing the elements of crime. § 160.59(10).

The New York State Human Rights Law, N.Y. Exec. Law § 296(16) was amended concurrent with the enactment of the sealing authority, prohibiting public and private employers and occupational licensing agencies from asking about, or taking adverse action (i.e., denying employment or licensure) because of, a sealed conviction.

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Exhibit 8

NEW YORK CORRECTION LAW
ARTICLE 23-A

LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

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§750. **Definitions.** For the purposes of this article, the following terms shall have the following meanings:

(1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.

(3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, opportunity, or job in question.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

§751. **Applicability.** The provisions of this article shall apply to any application by any person for a license or employment at any public or private employer, who has previously been convicted of one or more criminal offenses in this state or in any other jurisdiction, and to any license or employment held by any person whose conviction of one or more criminal offenses in this state or in any other jurisdiction preceded such employment or granting of a license, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct. Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

§752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

(1) There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or

(2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

§753. Factors to be considered concerning a previous criminal conviction; presumption. 1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

§754. Written statement upon denial of license or employment. At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

§755. Enforcement. 1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.

Exhibit 9

2014 New York Laws
EXC - Executive
Article 15 - (290 - 301) HUMAN RIGHTS LAW
290 - Purposes of article.

Universal Citation: NY Exec L § 290 (2014)

290. Purposes of article. 1. This article shall be known as the "Human Rights Law".

2. It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights.

3. The legislature hereby finds and declares that the state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education, training, housing or health care not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. A division in the executive department is hereby created to encourage programs designed to insure that every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the state; to encourage and promote the development and execution by all persons within the state of such state programs; to eliminate and prevent discrimination in employment, in places of public accommodation, resort or amusement, in educational institutions, in

public services, in housing accommodations, in commercial space and in credit transactions and to take other actions against discrimination as herein provided; and the division established hereunder is hereby given general jurisdiction and power for such purposes.

2014 New York Laws
EXC - Executive
Article 15 - (290 - 301) HUMAN RIGHTS LAW
296 - Unlawful discriminatory practices.

Universal Citation: NY Exec L § 296 (2014)

296. Unlawful discriminatory practices. 1. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency to discriminate against any individual because of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

(c) For a labor organization, because of the age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status of any individual, to exclude or to expel from its membership such individual

and the division's approval thereof shall be for a limited period and may be rescinded at any time by the division.

13. It shall be an unlawful discriminatory practice (i) for any person to boycott or blacklist, or to refuse to buy from, sell to or trade with, or otherwise discriminate against any person, because of the race, creed, color, national origin, sexual orientation, military status, sex,

or disability of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes; or

(b) Boycotts to protest unlawful discriminatory practices.

14. It shall be an unlawful discriminatory practice for any person engaged in any activity covered by this section to discriminate against a blind person, a hearing impaired person or a person with another disability on the basis of his or her use of a guide dog, hearing dog or service dog.

15. It shall be an unlawful discriminatory practice for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to deny any license or employment to any individual by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based upon his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-A of the correction law. Further, there shall be a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of any person, in a case alleging that the employer has been negligent in hiring or retaining an applicant or employee, or supervising a hiring manager, if after learning about an applicant or employee's past criminal conviction history, such employer has evaluated the factors set forth in section

seven hundred fifty-two of the correction law, and made a reasonable, good faith determination that such factors militate in favor of hire or retention of that applicant or employee.

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as

a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or

criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law.

17. Nothing in this section shall prohibit the offer and acceptance of a discount to a person sixty-five years of age or older for housing accommodations.

18. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations:

(1) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the said person, if the modifications may be necessary to afford the said person full enjoyment of the premises, in conformity with the provisions of the New York state uniform fire prevention and building code except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling, including reasonable modification to common use portions of the dwelling, or

(3) In connection with the design and construction of covered multi-family dwellings for first occupancy after March thirteenth, nineteen hundred ninety-one, a failure to design and construct dwellings in accordance with the accessibility requirements for multi-family dwellings found in the New York state uniform fire prevention and building code to provide that:

2014 New York Laws
EXC - Executive
Article 15 - (290 - 301) HUMAN RIGHTS LAW
297 - Procedure.

Universal Citation: NY Exec L § 297 (2014)

297. Procedure. 1. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or herself or his her attorney-at-law, make, sign and file with the division a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the division. The commissioner of labor or the attorney general, or the chair of the commission on quality of care for the mentally disabled, or the division on its own motion may, in like manner, make, sign and file such complaint. In connection with the filing of such complaint, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this article, may file with the division a verified complaint asking for assistance by conciliation or other remedial action.

2. a. After the filing of any complaint, the division shall promptly serve a copy thereof upon the respondent and all persons it deems to be necessary parties, and make prompt investigation in connection therewith. Within one hundred eighty days after a complaint is filed, the division shall determine whether it has jurisdiction and, if so, whether there is probable cause to believe that the person named in the

complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice. If it finds with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the commissioner shall issue and cause to be served on the complainant an order dismissing such allegations of the said complaint as to such respondent.

b. Notwithstanding the provisions of paragraph a of this subdivision, with respect to housing discrimination only, after the filing of any complaint, the division shall, within thirty days after receipt, serve a copy thereof upon the respondent and all persons it deems to be necessary parties, and make prompt investigation in connection therewith. Within one hundred days after a complaint is filed, the division shall determine whether it has jurisdiction and, if so, whether there is probable cause to believe that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice. If it finds with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the commissioner shall issue and cause to be served on the complainant an order dismissing such allegations of the said complaint as to such respondent.

3. a. If in the judgment of the division the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate such unlawful discriminatory practice by conference, conciliation and persuasion. Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the division, the complainant, and the respondent, including a provision for the entry in the supreme court in any county in the judicial district where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or where the housing accommodation, land or commercial space specified in the complaint is located, of a consent decree embodying the terms of the conciliation agreement. The division shall not disclose what has transpired in the course of such endeavors.

b. If a conciliation agreement is entered into, the division shall issue an order embodying such agreement and serve a copy of such order upon all parties to the proceeding, and if a party to any such proceeding is a regulated creditor, the division shall forward a copy of the order embodying such agreement to the superintendent.

c. If the division finds that noticing the complaint for hearing would be undesirable, the division may, in its unreviewable discretion, at any time prior to a hearing before a hearing examiner, dismiss the complaint on the grounds of administrative convenience. However, in cases of housing discrimination only, an administrative convenience dismissal will not be rendered without the consent of the complainant. The division may, subject to judicial review, dismiss the complaint on the grounds of untimeliness if the complaint is untimely or on the grounds that the election of remedies is annulled.

4. a. Within two hundred seventy days after a complaint is filed, or within one hundred twenty days after the court has reversed and remanded an order of the division dismissing a complaint for lack of jurisdiction or for want of probable cause, unless the division has dismissed the complaint or issued an order stating the terms of a conciliation agreement not objected to by the complainant, the division shall cause to be issued and served a written notice, together with a copy of such complaint, as the same may have been amended, requiring the respondent or respondents to answer the charges of such complaint and appear at a public hearing before a hearing examiner at a time not less than five nor more than fifteen days after such service and at a place to be fixed by the division and specified in such notice. The place of any such hearing shall be the office of the division or such other place as may be designated by the division. The case in support of the complaint shall be presented by one of the attorneys or agents of the division and, at the option of the complainant, by his or her attorney. With the consent of the division, the case in support of the complainant may be presented solely by his or her attorney. No person who shall have previously made the investigation, engaged in a conciliation proceeding or caused the notice to be issued shall act as a hearing examiner in such case. Attempts at conciliation shall not be received in evidence. At least two business days prior to the hearing the respondent shall,

and any necessary party may, file a written answer to the complaint, sworn to subject to the penalties of perjury, with the division and serve a copy upon all other parties to the proceeding. A respondent who has filed an answer, or whose default in answering has been set aside for good cause shown may appear at such hearing in person or otherwise, with or without counsel, cross examine witnesses and the complainant and submit testimony. The complainant and all parties shall be allowed to present testimony in person or by counsel and cross examine witnesses. The hearing examiner may in his or her discretion permit any person who has a substantial personal interest to intervene as a party, and may require that necessary parties not already parties be joined. The division or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent and any other party shall have like power to amend his or her answer. The hearing examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and a record made.

b. If the respondent fails to answer the complaint, the hearing examiner designated to conduct the hearing may enter the default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside only for good cause shown upon equitable terms and conditions.

c. Within one hundred eighty days after the commencement of such hearing, a determination shall be made and an order served as hereinafter provided. If, upon all the evidence at the hearing, the commissioner shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the commissioner shall state findings of fact and shall issue and cause to be served on such respondent an order, based on such findings and setting them forth, and including such of the following provisions as in the judgment of the division will effectuate the purposes of this article: (i) requiring such respondent to cease and desist from such unlawful discriminatory practice; (ii) requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to

membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, granting the credit which was the subject of any complaint, evaluating applicants for membership in a place of accommodation without discrimination based on race, creed, color, national origin, sex, disability or marital status, and without retaliation or discrimination based on opposition to practices forbidden by this article or filing a complaint, testifying or assisting in any proceeding under this article; (iii) awarding of compensatory damages to the person aggrieved by such practice; (iv) awarding of punitive damages, in cases of housing discrimination only, in an amount not to exceed ten thousand dollars, to the person aggrieved by such practice; (v) requiring payment to the state of profits obtained by a respondent through the commission of unlawful discriminatory acts described in subdivision three-b of section two hundred ninety-six of this article; and (vi) assessing civil fines and penalties, in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious; (vii) requiring a report of the manner of compliance. If, upon all the evidence, the commissioner shall find that a respondent has not engaged in any such unlawful discriminatory practice, he or she shall state findings of fact and shall issue and cause to be served on the complainant an order based on such findings and setting them forth dismissing the said complaint as to such respondent. A copy of each order issued by the commissioner shall be delivered in all cases to the attorney general, the secretary of state, if he or she has issued a license to the respondent, and such other public officers as the division deems proper, and if any such order issued by the commissioner concerns a regulated creditor, the commissioner shall forward a copy of any such order to the superintendent. A copy of any complaint filed against any respondent who has previously entered into a conciliation agreement pursuant to paragraph a of subdivision three of this section or as to whom an order of the division has previously been entered pursuant to this paragraph

shall be delivered to the attorney general, to the secretary of state if he or she has issued a license to the respondent and to such other public officers as the division deems proper, and if any such respondent is a regulated creditor, the commissioner shall forward a copy of any such complaint to the superintendent.

d. The division shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder.

e. Any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article. In cases of employment discrimination where the employer has fewer than fifty employees, such civil fine or penalty may be paid in reasonable installments, in accordance with regulations promulgated by the division. Such regulations shall require the payment of reasonable interest resulting from the delay, and in no case permit installments to be made over a period longer than three years.

5. Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice.

6. At any time after the filing of a complaint with the division alleging an unlawful discriminatory practice under this article, if the division determines that the respondent is doing or procuring to be done any act tending to render ineffectual any order the commissioner may enter in such proceeding, the commissioner may apply to the supreme court in any county where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or if the complaint alleges an unlawful discriminatory practice under subdivision two-a or paragraph (a), (b) or (c) of subdivision five of section two hundred ninety-six of this article, where the housing accommodation, land or commercial space specified in the complaint is located, or, if no supreme court justice is available in such county, in any other county within the judicial district, for an order requiring the respondents or any of them to show cause why they should not be enjoined from doing or procuring to be done such act. The order to show cause may contain a temporary restraining

order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording all parties an opportunity to be heard, if the court deems it necessary to prevent the respondents from rendering ineffectual an order relating to the subject matter of the complaint, it may grant appropriate injunctive relief upon such terms and conditions as it deems proper.

7. Not later than one year from the date of a conciliation agreement or an order issued under this section, and at any other times in its discretion, the division shall investigate whether the respondent is complying with the terms of such agreement or order. Upon a finding of non-compliance, the division shall take appropriate action to assure compliance.

8. No officer, agent or employee of the division shall make public with respect to a particular person without his consent information from reports obtained by the division except as necessary to the conduct of a proceeding under this section.

9. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages, including, in cases of housing discrimination only, punitive damages, and such other remedies as may be appropriate, including any civil fines and penalties provided in subdivision four of this section, unless such person had filed a complaint hereunder or with any local commission on human rights, or with the superintendent pursuant to the provisions of section two hundred ninety-six-a of this chapter, provided that, where the division has dismissed such complaint on the grounds of administrative convenience, on the grounds of untimeliness, or on the grounds that the election of remedies is annulled, such person shall maintain all rights to bring suit as if no complaint had been filed with the division. At any time prior to a hearing before a hearing examiner, a person who has a complaint pending at the division may request that the division dismiss the complaint and

annul his or her election of remedies so that the human rights law claim may be pursued in court, and the division may, upon such request, dismiss the complaint on the grounds that such person's election of an administrative remedy is annulled. Notwithstanding subdivision (a) of

section two hundred four of the civil practice law and rules, if a complaint is so annulled by the division, upon the request of the party bringing such complaint before the division, such party's rights to bring such cause of action before a court of appropriate jurisdiction shall be limited by the statute of limitations in effect in such court at the time the complaint was initially filed with the division. Any party to a housing discrimination complaint shall have the right within twenty days following a determination of probable cause pursuant to subdivision two of this section to elect to have an action commenced in a civil court, and an attorney representing the division of human rights will be appointed to present the complaint in court, or, with the consent of the division, the case may be presented by complainant's attorney. A complaint filed by the equal employment opportunity commission to comply with the requirements of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not constitute the filing of a complaint within the meaning of this subdivision. No person who has initiated any action in a court of competent jurisdiction or who has an action pending before any administrative agency under any other law of the state based upon an act which would be an unlawful discriminatory practice under this article, may file a complaint with respect to the same grievance under this section or under section two hundred ninety-six-a of this article.

10. With respect to cases of housing discrimination only, in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable attorney's fees to any prevailing or substantially prevailing party; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous; and further provided that in a proceeding brought in the division of human rights, the commissioner may only award attorney's fees as part of a final order after a public hearing held pursuant to subdivision four of this section. In no case shall attorney's fees be awarded to the division, nor shall the division be liable to a prevailing or substantially prevailing party for attorney's fees, except in a case in which the division is a party to the action or the proceeding in the division's capacity as an employer.

In order to find the action or proceeding to be frivolous, the court or the commissioner must find in writing one or more of the following:

(a) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or

(b) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

Exhibit 10

Legal Guidances - CCHR

Fair Chance Act: Legal Enforcement Guidance

NYC Commission on Human Rights Legal Enforcement Guidance on the Fair Chance Act, Local Law No. 63 (2015) ***Revised 6/24/2016***

VIEW AS PDF

The New York City Human Rights Law (the "NYCHRL") prohibits discrimination in employment, public accommodations, and housing. It also prohibits discriminatory harassment and bias-based profiling by law enforcement. The NYCHRL, pursuant to the 2005 Civil Rights Restoration Act, must be construed "independently from similar or identical provisions of New York state or federal statutes," such that "similarly worded provisions of federal and state civil rights laws [are] a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise."1

The New York City Commission on Human Rights (the "Commission") is the City agency charged with enforcing the NYCHRL. Individuals interested in vindicating their rights under the NYCHRL can choose to file a complaint with the Commission's Law Enforcement Bureau within one (1) year of the discriminatory act or file a complaint in New York State Supreme Court within three (3) years of the discriminatory act. The NYCHRL covers employers with four or more employees.

The Fair Chance Act ("FCA"), effective October 27, 2015, amends the NYCHRL by making it an unlawful discriminatory practice for most employers, labor organizations, and employment agencies to inquire about or consider the criminal history of job applicants until after extending conditional offers of employment. If an employer wishes to withdraw its offer, it must give the applicant a copy of its inquiry into and analysis of the applicant's conviction history, along with at least three business days to respond.

I. LEGISLATIVE INTENT

The FCA reflects the City's view that job seekers must be judged on their merits before their mistakes. The FCA is intended to level the playing field so that New Yorkers who are part of the approximately 70 million adults residing in the United States who have been arrested or convicted of a crime2 "can be considered for a position among other equally qualified candidates," and "not overlooked during the hiring process simply because they have to check a box."3

Even though New York Correction Law Article 23-A ("Article 23-A") has long protected people with criminal records from employment discrimination,4 the City determined that

such discrimination still occurred when applicants were asked about their records before completing the hiring process because many employers were not weighing the factors laid out in Article 23-A.5 For that reason, the FCA prohibits any discussion or consideration of an applicant's criminal history until after a conditional offer of employment. Certain positions are exempt from the FCA, as described in Section VII of this Guidance.

While the FCA does not require employers to hire candidates whose convictions are directly related to a job or pose an unreasonable risk, it ensures that individuals with criminal histories are considered based on their qualifications before their conviction histories. If an employer is interested enough to offer someone a job, it can more carefully consider whether or not that person's criminal history makes her or him unsuitable for the position. If the employer wishes to nevertheless withdraw its offer, it must first give the applicant a meaningful opportunity to respond before finalizing its decision.

II. Definitions

The FCA applies to both licensure and employment, although this Guidance focuses on employment. The term "applicant," as used in this Guidance, refers to both potential and current employees. The FCA applies to all decisions that affect the terms and conditions of employment, including hiring, termination, transfers, and promotions; where this Guidance describes the "hiring process," it includes the process for making all of these employment decisions. Any time the FCA or this Guidance requires notices and disclosures to be printed or in writing, they may also be communicated by email, if such method of communication is mutually agreed on in advance by the employer and the applicant.

For the purpose of this Guidance, the following key terms are defined as follows:

Article 23-A Analysis
The evaluation process mandated by New York Correction Law Article 23-A.

Article 23-A Factors
The factors employers must consider concerning applicants' criminal conviction history under Section 753 of New York Correction Law Article 23-A.

Conditional Offer of Employment
An offer of employment that can only be revoked based on:

1. The results of a criminal background check;
2. The results of a medical exam in situations in which such exams are permitted by the Americans with Disabilities Act;6 or
3. Other information the employer could not have reasonably known before the conditional offer if, based on the information, the employer would not have made the offer and the employer can show the information is material to job performance.

For temporary help firms, a conditional offer is the offer to be placed in a pool of applicants from which the applicant may be sent to temporary positions.

Conviction History

A previous conviction of a crime, either a felony or misdemeanor under New York law,7 or a crime as defined by the law of another state.

Criminal Background Check

When an employer, orally or in writing, either:

1. Asks an applicant whether or not she or he has a criminal record; or
2. Searches public records, including through a third party, such as a consumer reporting agency ("CRA"), for an applicant's criminal history.

Criminal History

A previous record of criminal convictions or non-convictions or a currently pending criminal case.

Fair Chance Process

The post-conditional offer process mandated by the FCA, as outlined in Section V of this Guidance.

Inquiry

Any question, whether made in writing or orally, asked for the purpose of obtaining an applicant's criminal history, including, without limitation, questions in a job interview about an applicant's criminal history; and any search for an applicant's criminal history, including through the services of a third party, such as a consumer reporting agency.

Non-convictions

A criminal action, not currently pending, that was concluded in one of the following ways:

1. Termination in favor of the individual, as defined by New York Criminal Procedure Law ("CPL") § 160.50, even if not sealed;
2. Adjudication as a youthful offender, as defined by CPL § 720.35, even if not sealed;
3. Conviction of a non-criminal violation that has been sealed under CPL § 160.55; or
4. Convictions that have been sealed under CPL § 160.58.

Statement

Any words, whether made in writing or orally, for the purpose of obtaining an applicant's criminal history, including, without limitation, stating that a background check is required for a position.

Temporary Help Firms

A business which recruits, hires, and assigns its own employees to perform work at or services for other organizations, to support or supplement the other organization's workforce, or to provide assistance in special work situations such as, without limitation, employee absences, skill shortages, seasonal workloads, or special assignments or projects.8

III. Per Se Violations of the FCA

As of October 27, 2015, the following acts are separate, chargeable violations of the NYCHRL:

1. Declaring, printing, or circulating – or causing the declaration, printing, or circulation of – any solicitation, advertisement, or publication for employment that states any limitation or specification regarding criminal history, even if no adverse action follows. This includes, without limitation, advertisements and employment applications containing phrases such as: "no felonies," "background check required," and "must have clean record."
2. Making any statement or inquiry, as defined in Section II of this Guidance, before a conditional offer of employment, even if no adverse action follows.
3. Withdrawing a conditional offer of employment based on an applicant's criminal history before completing the Fair Chance Process as outlined in Section V of this Guidance. Each of the following is a separate, chargeable violation of the NYCHRL:

1. Failing to disclose to the applicant a written copy of any inquiry an employer conducted into the applicant's criminal history;
2. Failing to share with the applicant a written copy of the employer's Article 23-A analysis;
3. Failing to hold the prospective position open for at least three business days, from an applicant's receipt of both the inquiry and analysis, to allow the applicant to respond.
4. Taking an adverse employment action because of an applicant's non-conviction.9

IV. The Criminal Background Check Process Under the FCA

The FCA does not change what criminal history information employers may consider. Instead, it changes when employers may consider this information. No employer may seek, obtain, or base an adverse employment action on a non-conviction.10 No employer may seek, obtain, or base an adverse employment action on a criminal conviction until after extending a conditional offer of employment. After a conditional offer of employment, an employer can only withdraw the offer after evaluating the applicant under Article 23-A and finding that the applicant's conviction history poses a direct relationship or unreasonable risk.

A. Before a Conditional Offer

The FCA prohibits the discovery and use of criminal history before a conditional offer of employment. During this time, an employer must not seek or obtain an applicant's criminal history. Consistent with Article 23-A, an employer's focus must instead be on an applicant's qualifications.

The following are examples of common hiring practices that are affected by the FCA.

i. Solicitations, advertisements, and publications for employment cannot mention criminal history.

The FCA now explicitly prohibits employers from expressing any limitation or specification based on criminal history in their job advertisements,11 even though such advertisements are already illegal under the existing NYCHRL.12 Ads cannot say, for example, "no felonies," "background check required," or "clean records only." Solicitations, advertisements, and publications encompass a broad variety of items, including, without limitation, employment applications, fliers, handouts, online job postings, and materials distributed at employment fairs and by temporary help firms and job readiness organizations. Employment applications cannot ask whether an applicant has a criminal history or a pending criminal case or authorize a background check.

Solicitations, advertisements, and publications may include language that welcomes people with criminal records, however. For example, solicitations, advertisements, or publications that include language such as "People with criminal histories are encouraged to apply," and "We value diverse experiences, including prior contact with the criminal legal system" are permissible. Stigmatizing language, like "ex-felon" and "former inmate," may not be used.

ii. Employers cannot inquire about criminal history during the interview process.

The FCA prohibits employers from making any inquiry or statement related to an applicant's criminal history until after a conditional offer of employment. Examples of prohibited statements and inquiries include, without limitation:

• Questions, whether written or oral, during a job interview about criminal history;

• Assertions, whether written or oral, that individuals with convictions, or certain convictions, will not be hired or cannot work at the employer; and

• Investigations into the applicant's criminal history, including using public records or the Internet, whether conducted by an employer or for an employer by a third party.

The FCA does not prevent employers from otherwise looking into an applicant's background and experience to verify her or his qualifications for a position, including asking for resumes and references and performing general Internet searches (e.g., Google,

LinkedIn, etc.). Searching an applicant's name is legal, but trying to discover an applicant's conviction history is not. In connection with an applicant, employers cannot search for terms such as, "arrest," "mugshot," "warrant," "criminal," "conviction," "jail," or "prison." Nor can employers search websites that contain or purport to contain arrest, warrant, conviction, or incarceration information.

The FCA allows an applicant to refuse to respond to any prohibited inquiry or statement. Such refusal or response to an illegal question shall not disqualify the applicant from the prospective employment.

iii. Inadvertent disclosures of criminal record information before a conditional offer of employment do not create employer liability.

The FCA prohibits any inquiry or statement made for the purpose of obtaining an applicant's criminal history. If a legitimate inquiry not made for that purpose leads an applicant to reveal criminal history, the employer should continue its hiring process. It may not examine the applicant's conviction history information until after deciding whether or not to make a conditional offer of employment.

If the applicant raises her or his criminal record voluntarily, the employer should not use that as an opportunity to explore an applicant's criminal history further. The employer should state that, by law, it will only consider the applicant's record if it decides to offer her or him a job. Similarly, if an applicant asks an employer during the interview if she or he will be subject to a criminal background check, the employer may state that a criminal background check will be conducted only after a conditional offer of employment. It must then move the conversation to a different topic. Employers who make a good faith effort to exclude information regarding criminal history before extending a conditional offer of employment will not be liable under the FCA.

B. After the Conditional Offer of Employment

After extending a conditional offer of employment, as defined in Section II of this Guidance, an employer may make the same inquiries into, and statements about, an applicant's criminal history as before the FCA became effective. An employer may:

- Ask, either orally or in writing, whether an applicant has a criminal conviction history or a pending criminal case;

- Run a background check itself or, after giving the applicant notice and getting her or his permission, use a consumer reporting agency to do so;13 and

- Once an employer knows about an applicant's conviction, ask her or him about the circumstances that led to it.

Employers must never inquire about or act on non-conviction information, however. To guard against soliciting or considering non-conviction information, employers may frame

inquiries by using the following language after a conditional offer is made:

Have you ever been convicted of a misdemeanor or felony? Answer "NO" if your conviction: (a) was sealed, expunged, or reversed on appeal; (b) was for a violation, infraction, or other petty offense such as "disorderly conduct;" (c) resulted in a youthful offender or juvenile delinquency finding; or (d) if you withdrew your plea after completing a court program and were not convicted of a misdemeanor or felony.

If an employer hires an applicant after learning about her or his conviction history, the FCA does not require it to do anything more. An employer that wants to withdraw its conditional offer of employment, however, must first consider the Article 23-A factors. If, after doing so, an employer still wants to withdraw its conditional offer, it must follow the Fair Chance Process.

C. Evaluating the Applicant Using Article 23-A

Under Article 23-A, an employer cannot deny employment unless it can:

1. Draw a direct relationship between the applicant's criminal record and the prospective job; or

2. Show that employing the applicant "would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public."14

An employer that cannot show the applicant meets at least one of the exceptions to Article 23-A cannot withdraw the conditional offer because of the applicant's criminal record.

An employer cannot simply presume a direct relationship or unreasonable risk exists because the applicant has a conviction record.15 The employer must evaluate the Article 23-A factors using the applicant's specific information before reaching either conclusion.

• To claim the direct relationship exception, an employer must first draw some connection between the nature of conduct that led to the conviction(s) and the potential position. If a direct relationship exists, an employer must evaluate the Article 23-A factors to determine whether the concerns presented by the relationship have been mitigated.16

• To claim the unreasonable risk exception, an employer must begin by assuming that no risk exists and then show how the Article 23-A factors combine to create an unreasonable risk.17 Otherwise, this exception would cover all convictions not directly related.

The Article 23-A factors are:

• That New York public policy encourages the licensure and employment of people with criminal records;

• The specific duties and responsibilities of the prospective job;

• The bearing, if any, of the person's conviction history on her or his fitness or ability to

perform one or more of the job's duties or responsibilities;

• The time that has elapsed since the occurrence of the events that led to the applicant's criminal conviction, not the time since arrest or conviction;

• The age of the applicant when the events that led to her or his conviction occurred, not the time since arrest or conviction;

• The seriousness of the applicant's conviction history;18

• Any information produced by the applicant, or produced on the applicant's behalf, regarding her or his rehabilitation or good conduct;

• The legitimate interest of the employer in protecting property and the safety and welfare of specific individuals or the general public.

Employers must also consider a certificate of relief from disabilities or a certificate of good conduct, which shall create a presumption of rehabilitation regarding the relevant conviction.19

Employers must carefully conduct the Article 23-A analysis. Before extending a conditional offer of employment, employers must define the job's duties and responsibilities, as required by Article 23-A. Employers cannot alter the job's duties and responsibilities after making a conditional offer of employment. Once an employer extends a conditional offer and learns of an applicant's criminal record, it must solicit the information necessary to properly consider each Article 23-A factor, including the applicant's evidence of rehabilitation.

The Commission will review private employers' adverse employment decisions to ensure that they correctly consider the Article 23-A factors and properly apply the exceptions. The Commission will begin with the purpose of Article 23-A: to create "a fair opportunity for a job is a matter of basic human fairness," one that should not be "frustrated by senseless discrimination."20 The Commission will also consider Article 23-A case law.21 Employers must evaluate each Article 23-A factor; they cannot ignore evidence favorable to the applicant;22 and they cannot disproportionately weigh any one factor over another.23 Employers should consider applicants' successful performance of their job duties in past employment, along with evidence that they have addressed the causes of their criminal activity.24

V. The Fair Chance Process

If, after evaluating the applicant according to Article 23-A, an employer wishes to decline employment because a direct relationship or unreasonable risk exists, it must follow the Fair Chance Process:

1. Disclose to the applicant a written copy of any inquiry it conducted into the applicant's

criminal history;

2. Share with the applicant a written copy of its Article 23-A analysis; and

3. Allow the applicant at least three business days, from receipt of the inquiry and analysis, to respond to the employer's concerns.

A. Disclosing the Inquiry

The Commission requires an employer to disclose a complete and accurate copy of every piece of information it relied on to determine that an applicant has a criminal record, along with the date and time the employer accessed the information. The applicant must be able to see and challenge the same criminal history information relied on by the employer.

Employers who hire consumer reporting agencies to conduct background checks can fulfill this obligation by supplying a copy of the CRA's report on the applicant.25 Because CRAs can be held liable for aiding and abetting discrimination under the NYCHRL, they should ensure that their customers only request criminal background reports after a conditional offer of employment. Employers who rely on criminal record information beyond what is contained in a criminal background report must also give that information to the applicant.

Employers who search the Internet to obtain criminal histories must print out the pages they relied on, and such printouts must identify their source so that the applicant can verify them. Employers who check public records must provide copies of those records. Employers who rely on oral information must identify the interlocutor and provide a written summary of their conversation. The summary must contain the same information the employer relied on in reaching its determination. Oral information includes anything the applicant revealed about her or his criminal record.

B. Sharing the Fair Chance Notice

The FCA directs the Commission to determine the manner in which employers inform applicants under Article 23-A and provide a written copy of that analysis to applicants.26 The Commission has prepared a Fair Chance Notice (the "Notice")27 that employers may use to comply with this requirement. As long as the material substance – considering specific facts in the Article 23-A analysis – does not change, the Notice may be adapted to an employer's preferred format.

The Notice requires employers to evaluate each Article 23-A factor and choose which exception – direct relationship or unreasonable risk – the employer relies on. The Notice also contains space for the employer to articulate its conclusion.28 Boilerplate denials that simply list the Article 23-A factors violate the FCA. For example, an employer cannot simply say it considered the time since conviction; it must identify the years and/or months since the conviction. An employer also cannot list specific facts for each factor but then fail to describe how it concluded that the applicant's record met either the direct relationship or

unreasonable risk exceptions to Article 23-A.

Finally, the Notice informs the applicant of her or his time to respond and requests evidence of rehabilitation and good conduct. The Notice provides examples of such information. Employers may identify specific examples of rehabilitation and good conduct that would be most relevant to the prospective position, but examples must be included.

C. Allowing Time to Respond

Employers must give applicants a reasonable time, which shall be no less than three business days, to respond to the employer's inquiry and Notice. During this time, the employer may not permanently place another person in the applicant's prospective position. This time period begins running when an applicant receives both the inquiry and Notice. Employers may therefore wish to confirm receipt, either by disclosing the information in person, electronically, or by registered mail. Such method of communication must be mutually agreed on in advance by the applicant and employer. Otherwise, the Commission will credit an applicant's recollection as to when she or he received the inquiry and Notice.

By giving an applicant at least three business days to respond, the FCA contemplates a process in which employers discuss their reasons for finding that an applicant's record poses a direct relationship or unreasonable risk. The process allows an applicant to respond either orally or in writing and provide additional information relevant to any of the Article 23-A factors.29 After receiving additional information from an applicant, an employer must examine whether it changes its Article 23-A analysis. Employers may offer an applicant a similar position that mitigates the employer's concerns. If, after communicating with an applicant, the employer decides not to hire her or him, it must relay that decision to the applicant.

The three-day time period to respond also provides an opportunity for the applicant to address any errors on the employer's background report, including any discrepancies between the convictions she or he disclosed and the results of the background check. As detailed below, a discrepancy could be due to an error on the report or an applicant's intentional misrepresentation.

i. Handling Errors in the Background Check

An error on a background check might occur because, for example, it contains information that pertains to another person or is outdated. If an applicant is able to demonstrate an error on the background report, the employer must conduct the Article 23-A analysis based on the corrected conviction history information to ensure its decision is not tainted by the previous error. If the employer then finds a direct relationship or unreasonable risk and intends to take an adverse action on that basis, it must follow the Fair Chance Process: the applicant must be given a copy of the corrected inquiry, the employer's Article 23-A

analysis, at least three business days to respond, with an opportunity to provide any additional information for the employer to review and re-examine its analysis.

ii. Handling Applicants' Misrepresentations of Their Conviction Histories

If an applicant cannot or does not demonstrate that any discrepancy between the information she or he disclosed and the employer's background report is due to an error, the employer can choose not to hire the individual based on the applicant's misrepresentation. It need not evaluate the applicant's record under Article 23-A.

❚❚ VI. Temporary Help Firms Under the Fair Chance Act

Temporary help firms employ individuals, either as direct or joint employers, and place them in job assignments at the firms' clients. The FCA applies the same way to temporary help firms as it does to any other employer. The only difference is that, for these firms, a conditional offer of employment is an offer to place an applicant in the firm's labor pool, from which the applicant may be sent on job assignments to the firm's clients. Before a temporary help firm withdraws a conditional offer of employment after discovering an applicant's conviction history, it must follow the Fair Chance Process, according to Section V of this Guidance. To evaluate the job duties, a temporary help firm may only consider the basic skills necessary to be placed in its applicant pool.

Employers who accept placements from temporary help firms, and who wish to inquire about temporary workers' criminal histories, must follow the Fair Chance Act. They may not make any statements or inquiries about an applicant's criminal record until after the worker is assigned to the employer, and they must follow the Fair Chance Process if they wish to decline employment because of an applicant's criminal record.

As with any other type of discrimination, temporary help firms will be liable if they aid and abet an employer's discriminatory hiring preferences. For example, a temporary help firm cannot, based on an employer's instructions, refer only temporary workers who do not have criminal histories or who have "less serious" criminal histories.

❚❚ VII. Positions Exempt from the FCA

Consistent with the Local Civil Rights Restoration Act of 2005,30 all exemptions to coverage under the FCA's anti-discrimination provisions are to be construed narrowly. Employers may assert the application of an exemption to defend against liability, and they have the burden of proving the exemption by a preponderance of the evidence. Other than the employers described in Subsections C and D of this Section, the Commission does not assume that an entire employer or industry is exempt and will investigate how an exemption applies to a particular position or role. Positions that are exempt from the FCA are not necessarily exempt from Article 23-A.

A. Employers hiring for positions where federal, state, or local law requires criminal

background checks or bars employment based on certain criminal convictions

The FCA does not apply to the actions of employers or their agents that are taken pursuant to any state, federal, or local law that requires criminal background checks for employment purposes or bars employment based on criminal history.31 The purpose of this exemption is to not delay a criminal background inquiry when the results of that inquiry might legally prohibit an employer from hiring an applicant.

A network of federal, state, and local laws creates employment barriers for people with criminal records. The Commission characterizes these barriers as either mandatory or discretionary. Mandatory barriers require a licensing authority or employer to deny applicants with certain convictions enumerated in law. Discretionary barriers allow, but do not require, a licensing authority or employer to deny applicants with criminal records, and may or may not enumerate disqualifying convictions. The FCA controls any time an employer's decision is discretionary, meaning it is not explicitly mandated by law.

For example, state law contains mandatory barriers for – and requires background checks of – applicants to employers regulated by the state Department of Health ("DOH"), Office of Mental Health ("OMH"), and Office of People with Developmental Disabilities ("OPWDD").32 These agencies require the employers they regulate to conduct background checks because the agencies are charged by state law to ensure that individuals with certain convictions are not hired to work with vulnerable people.33 Employers regulated by DOH, OMH, and OPWDD are therefore exempt from the FCA when hiring for positions where a criminal history check is required by law. For positions that do not require a criminal history check, however, such employers have to follow the FCA.

The FCA applies when an employer hires people who require licensure, or approval by a government agency, even if the license has mandatory barriers. In that case, an employer can only ask whether an applicant has the required license or can obtain one within an acceptable period of time. Any inquiry into the applicant's criminal record – before a conditional offer of employment – is not allowed. An applicant who has a license has already passed any criminal record barriers and been approved by a government agency. An applicant who cannot, because of her or his conviction record, obtain a required license may have her or his conditional offer withdrawn or employment terminated for such legitimate nondiscriminatory reason.

B. Employers Required by a Self-Regulatory Organization to Conduct a Criminal Background Check of Regulated Persons

Employers in the financial services industry are exempt from the FCA when complying with industry-specific rules and regulations promulgated by a self-regulatory organization ("SRO").34 This exemption only applies to those positions regulated by SROs; employment decisions regarding other positions must still comply with the FCA.

C. Police and Peace Officers, Law Enforcement Agencies, and Other Exempted City Agencies

Police and peace officers are limited to their definitions in CPL §§ 1.20(34) and 2.10, respectively. Employment decisions about such officers are exempt from the FCA, as are decisions about positions in law enforcement agencies exempted under New York Correction Law Article 23-A.35

As of the date of this Guidance, the following City agencies are also exempt from the FCA: the New York City Police Department, Fire Department, Department of Correction, Department of Investigation, Department of Probation, the Division of Youth and Community Development, the Business Integrity Commission, and the District Attorneys' offices in each borough.

D. City Positions Designated by the Department of Citywide Administrative Services ("DCAS") as Exempt

This exemption gives the Commissioner of DCAS the discretion to determine that employment decisions about some City positions, not already exempted pursuant to another provision, need not comply with the FCA because the position involves law enforcement; is susceptible to bribery or other corruption; or entails the provision of services to, or the safeguarding of, people vulnerable to abuse.

Once DCAS exempts a position, applicants may be asked about their conviction history at any time during the hiring process. Under this exemption, however, applicants who are denied employment because of their conviction history must receive a written copy of the DCAS's Article 23-A analysis.36

VIII. Best Practices for Employers

An employer claiming an exemption must be able to show that the position falls under one of the categories in Section VII of this Guidance. Employers availing themselves of exemptions to the FCA should inform applicants of the exemption they believe applies and keep a record of their use of such exemptions for a period of five (5) years from the date an exemption is used. Keeping an exemption log will help the employer respond to Commission requests for information.

The exemption log should include the following:

- Which exemption(s) is claimed;
- How the position fits into the exemption and, if applicable, the federal, state, or local law or rule allowing the exemption under Sections VII(A) or (B) of this Guidance;
- A copy of any inquiry, as defined by Section V(A) of this Guidance, along with the name of the employee who made it;

• A copy of the employer's Article 23-A analysis and the name of any employees who participated in it; and

• The final employment action that was taken based on the applicant's criminal history.

Employers may be required to share their exemption log with the Commission. Prompt responses to Commission requests may help avoid a Commission-initiated investigation into employment practices.

The Commission recommends that the results of any inquiry into an applicant's criminal history be collected and maintained on separate forms and kept confidential. An applicant's criminal history should not be used, distributed, or disseminated to any persons other than those involved in making an employment decision about an applicant.37

IX. Enforcement

The Commission will vigorously enforce the FCA. The amount of a civil penalty will be guided by the following factors, among others:

• The severity of the particular violation;

• The existence of additional previous or contemporaneous violations;

• The employer's size, considering both the total number of employees and its revenue; and

• Whether or not the employer knew or should have known about the FCA.

These penalties are in addition to the other remedies available to people who successfully resolve or prevail on claims under the NYCHRL, including, but not limited to, back and front pay, along with compensatory and punitive damages.

The Commission will presume, unless rebutted, that an employer was motivated by an applicant's criminal record if it revokes a conditional offer of employment, as defined in Section II of this Guidance. Consistent with that definition, the Commission will presume that any reason known to the employer before its conditional offer is not a legitimate reason to later withdraw the offer.

X. Criminal Record Discrimination in Obtaining Credit

The FCA additionally prohibits adverse actions regarding credit based on an individual's criminal record. No person can ask about non-convictions in connection with any application or evaluation for credit. Similarly, credit cannot be denied or affected adversely because of an individual's criminal record, unless the person's record is directly related to the extension of credit or otherwise creates an unreasonable risk that the person is not credit-worthy.

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1 Local Law No. 85 (2005). "The provisions of this title shall be construed liberally for the

accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably worded to provisions of this title have been so construed." N.Y.C. Admin. Code § 8-130.

2 Gov'tl Affairs Division of the N.Y. City Council, Committee Report on Int. No. 318-A, S. 2015-5, at 2 (June 9, 2015) ("Civil Rights Committee's Report"), available at http://legistar.council.nyc.gov/View.ashx ?M=F&ID=3815856&GUID=59D912BA-68B5-429C-BF39-118EB4DFAAF5.

3 Testimony of Gale A. Brewer, Manhattan Borough President on Int. No. 318 to Prohibit Employment Discrimination Based on One's Arrest Record or Criminal Conviction at 2 (Dec. 3, 2014) (emphasis in original), available at http://legistar.council.nyc.gov /View.ashx?M=F&ID=3410802&GUID=7D143B7E-C532-41EF-9A97-04FD17854ED7.

4 Violating Article 23-A is an unlawful discriminatory practice under the NYCHRL. N.Y.C. Admin. Code § 8-107(10).

5 Transcript of the Minutes of the Committee on Civil Rights at 10 (Dec. 3, 2014) (statement of Council Member Jumaane Williams), available at http://legistar.council.nyc.gov/View.ashx?M=F&ID=3410594&G UID=5FE2433E-1A95-4FAA-AECC-D60D4016F3FB.

6 The Americans with Disabilities Act ("ADA") prohibits employers from conducting medical exams until after a conditional offer of employment. 42 U.S.C. § 12112(d)(3). To comply with the FCA and the ADA, employers may condition an offer of employment on the results of a criminal background check and then, after the criminal background check, a medical examination.

7 A misdemeanor is an offense, other than a "traffic infraction," for which a person may be incarcerated for more than 15 days and less than one year. N.Y. Pen. L. § 10.00(4). A felony is an offense for which a person may be incarcerated for more than one year. Id. § 10.00(5).

8 N.Y. Lab. L. § 916(5).

9 The FCA updates the NYCHRL's protections regarding non-conviction discrimination to match the New York State Human Rights Law. See Section XI of this Guidance.

10 Employers of police and peace officers can consider all non-convictions, except criminal actions terminated in favor of the applicant, as defined by New York Criminal Procedure Law § 160.50. N.Y.C. Admin. Code §§ 8-107(11)(a),(b).

11 Id. § 8-107(11-a)(a)(1).

12 Advertisements excluding people who have been arrested violate the NYCHRL's complete ban on employment decisions based on an arrest that did not lead to a criminal

conviction. Id. § 8-107(11). Employers whose advertisements exclude people with criminal convictions are not engaging in the individual analysis required by Article 23-A. Id. § 8-107(10).

13 The consumer report cannot contain credit information. Under the Stop Credit Discrimination in Employment Act, employers, labor organizations, and employment agencies cannot request or use the consumer credit history of an applicant or employee for the purpose of making any employment decisions, including hiring, compensation, and other terms and conditions of employment. Id. §§ 8-102(29); 8-107(24).

14 N.Y. Correct. L. § 752.

15 Bonacorsa v. Van Lindt, 71 N.Y.2d 605, 613-14 (N.Y. 1988).

16 Id. at 613-14; see Soto v. N.Y. State Office of Mental Retardation & Developmental Disabilities, 907 N.Y.S.2d 104, 26 Misc. 3d 1215(A) at *9 (N.Y. Sup. Ct. 2010) (citing Marra v. City of White Plains, 467 N.Y.S.2d 865, 870 (N.Y. App. Div. 1983)).

17 Bonacorsa, 71 N.Y.2d at 613; Exum v. N.Y. City Health & Hosps. Corp., 964 N.Y.S.2d 58, 37 Misc. 3d 1218(A) at *6 (N.Y. Sup. Ct. 2012).

18 Employers may judge the seriousness of an applicant's criminal record based on the number of felony and misdemeanor convictions, along with whether the acts underlying those convictions involved violence or theft.

19 N.Y. Correct. L. § 753(2). An employer may not disfavor an applicant because she or he does not possess a certificate.

20 Governor's Approval Mem., Bill Jacket, L. 1976, ch. 931.

21 Nearly all reported cases concern public agencies' employment decisions, which cannot be reversed unless "arbitrary and capricious." N.Y. Correct. L. § 755; see C.P.L.R. § 7803(3). The "arbitrary and capricious" standard does not apply to private employers.

22 Gallo v. N.Y. State Office of Mental Retardation & Developmental Disabilities, 830 N.Y.S.2d 796, 798 (N.Y. App. Div. 2007).

23 Soto, 26 Misc. 3d 1215(A) at *7.

24 Odems v. N.Y.C. Dep't of Educ., No. 400637/09 at *4, 2009 WL 5225201, at *5, 2009 N.Y. Misc. LEXIS 6480, at *5 (N.Y. Sup. Ct. Dec. 16, 2009); El v. N.Y.C. Dep't of Educ., 23 Misc.3d 1121(A), at *4-5 (N.Y. Sup. Ct. 2009).

25 15 U.S.C. § 1681d; N.Y. Gen. Bus. L. § 380-b(b).

26 N.Y.C. Admin. Code § 8-107(11-a)(b)(ii).

27 The Notice is available on the Commission's website, http://www.nyc.gov/FairChanceNYC.

28 N.Y. Correct. L. § 753(1)(h).

29 N.Y.C. Admin. Code § 8-107(11-a)(b).

30 N.Y.C. Local Law No. 85 (2005); N.Y.C. Admin. Code § 8-130.

31 N.Y.C. Admin. Code § 8-107(11-a)(e).

32 N.Y. Exec. L. § 845-b.

33 Id. at 845-b(5)(a).

34 15 U.S.C. § 78c(a)(26).

35 N.Y. Correct. L. § 750(5).

36 N.Y.C. Admin. Code § 8-107(11-a)(f)(2).

37 After hire, the employee's supervisor or manager may also be informed of the applicant's criminal record.

Exhibit 11

CERTIFICATES OF RELIEF FROM DISABILITIES

AND CERTIFICATES OF GOOD CONDUCT

LICENSURE AND EMPLOYMENT OF OFFENDERS

(See Articles 23 and 23-A of the Correction Law, §§700-706 and §§750-755)

1. What is the purpose of a Certificate of Relief from Disabilities and/or a Certificate of Good Conduct?

Laws governing Certificates of Relief from Disabilities and Certificates of Good Conduct were enacted "to reduce the automatic rejection and community isolation that often accompany conviction of crimes" and "contribute to the complete rehabilitation of first offenders and their successful return to responsible lives in the community." Additionally, Correction Law §753(1)(a) recognizes that it is the public policy of New York State to "encourage the licensure and employment of persons previously convicted of one or more criminal offenses." Correction Law §753(2) further establishes that with respect to a "public agency" or "private employer", a certificate "shall create a presumption of rehabilitation in regard to the offense or offenses specified therein." Such certificates are consistent with 2006 statutory change to the general purposes of the Penal Law (PL), specifically PL §1.05(6), which adds the concept of reentry and reintegration by referring to "the promotion of ... successful and productive reentry and reintegration into society..." of offenders.

2. Who is eligible for a Certificate of Relief from Disabilities?

Correction Law §700 establishes that a person is eligible to receive a Certificate of Relief from Disabilities if he/she has been convicted of a crime or of an offense, but has not been convicted of more than one felony. A "felony" means a conviction of a felony in this state or of an offense in any other jurisdiction for which a sentence to a term of imprisonment in excess of one year, or a sentence of death, was authorized. Two or more convictions of felonies charged in separate counts of one indictment or information or two or more convictions of felonies charged in two or more indictments or information's, filed in the same court prior to judgment under any of them, shall be considered only one conviction. Additionally, a plea or verdict of guilty upon which a sentence or the execution of a sentence has been suspended or upon which a sentence of probation, conditional discharge or unconditional discharge has been imposed, shall be considered a conviction.

3. Does an individual adjudicated a youthful offender incur any civil disabilities resulting in a need to secure a Certificate of Relief from Disabilities?

No. Criminal Procedure Law §720.35 (1) states "a youthful offender adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority". Therefore, no certificate is necessary.

(See People v. Doe (52 Misc. 2d 656, 276 N.Y.S.2d 437), wherein the District Court of Nassau County held that Correction Law Article 23 is not applicable to adjudication as a youthful offender.)

4. What can a Certificate of Relief from Disabilities do and not do?

In general, Correction Law §701 provides that a certificate may relieve an eligible offender of any forfeiture or disability, or remove any bar to employment, automatically imposed by law by reason of conviction of the crime or the offense. A conviction for a crime specified in a Certificate of Relief from Disabilities shall not cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. However, a certificate cannot overcome automatic forfeiture resulting from convictions for violations of Public Health Law §2806(5) or Vehicle and Traffic Law (VTL) §1193(2) (b). These sections of law relate to revocation of a hospital operating certificate and suspension of a New York State Driver's License, respectively. Further, a conviction for a second or subsequent violation of any subdivision of VTL §1192 within the preceding 10 years imposes a disability to apply for or receive an operator's license during the period provided in such law. A certificate also does not permit the convicted person to retain or be eligible for public office, nor does it void the conviction as if it were a pardon (see Correction Law §§701 and 706).

A certificate cannot in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege. (see Correction Law §701(3)) However, Correction Law Article 23-A establishes parameters to safeguard against unfair discrimination against persons previously convicted of one or more criminal offenses by a "public agency" or "private employer". Correction Law §752 establishes that no applicant for any "license" or "employment", to which the provisions of this article are applicable, can be denied a license or employment by reason of the applicant's previous criminal conviction or by reason of a finding of lack of "good moral character" when such finding is based upon the applicant's criminal conviction of one or more criminal offenses, unless:

(1) there is a "direct relationship" between one or more of the previous criminal offenses and the specific license or employment sought; or
(2) the issuance of the license or granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Correction Law §753(2) establishes that in making a determination pursuant to Correction Law §752, a public agency or private employer must give consideration to a certificate of relief from disabilities or certificate of good conduct issued to an applicant and the certificate "shall create a presumption of rehabilitation in regard to the offense or offenses specified therein."

With respect to Article 23-A, the following terms are of interest:

· "Public agency" means "the state or any local subdivision thereof, or any state or local department, agency, board, or commission."
· "Private employer" means "any person, company, corporation, labor organization or association which employs ten or more persons."
· "License" means "any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided however, that "license" shall not, for purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm."
· "Employment" means "any occupation, vocation, or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not... include 'membership in any law enforcement agency.' "
"Direct relationship" means "that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought."

For further details as to applicability, unfair discrimination, factors to be considered, denial of license or employment, and enforcement, see Correction Law Article 23-A.

5. Who may grant such certificates and when may they be granted?

Correction Law §702 establishes that any court which imposed a revocable sentence or imposed a sentence upon a defendant, other than one resulting in commitment to an institution under the jurisdiction of the New York State Department of Correctional Services, may grant a certificate to an eligible offender.

A court may grant this certificate at the time of sentencing or any time thereafter. If granted at the time sentence is pronounced, it may grant relief from forfeitures and/or disabilities; if granted later, it can only apply to disabilities. DPCA's Investigations and Report Rule, specifically 9 NYCRR §350.7(b)(6) establishes that where it is considered appropriate, the pre-sentence report shall specify reasons consistent with law as to granting of a certificate of relief from disabilities at the time of sentencing in accordance with other Rule provisions. For additional information see Rule §350.8.

Correction Law §703 provides that the State Board of Parole has the power to issue a Certificate of Relief from Disabilities to any eligible offender who is serving or has served time in a New York State correctional institution or who resides within this state and whose judgment of conviction was rendered by a court in any other jurisdiction (e.g. federal court or an out-of-state court). The Board of Parole typically entertains granting such certificates at the time an inmate is being considered for parole.

6. **Where does a probationer, whose case has been transferred from one jurisdiction (i.e. county/New York City) to another jurisdiction, apply for a Certificate of Relief from Disabilities? Does he/she apply to the original sentencing court or to the court of equal jurisdiction in the receiving county/New York City?**

Unless the sentencing court indicates otherwise at the time of transfer, a probationer seeking a Certificate of Relief from Disabilities should be directed to apply to the court to which his/her case was transferred. Where there is a complete transfer, the appropriate court in the receiving jurisdiction must make this determination (see CPL§410.80 and Correction Law §702).

7. **What criteria are to be considered by the court or the Board of Parole when issuing a Certificate of Relief from Disabilities?**

Correction Law §§702(2) and 703(3) states that the court or the Board of Parole, whichever is applicable, must be satisfied that the person to be granted relief is an eligible offender, as defined by Correction Law §700, that the relief to be granted is consistent with the rehabilitation of the eligible offender and that the relief to be granted by the certificate is consistent with the public interest.

8. **What is a Certificate of Good Conduct and who has the power to issue such certificates?**

A Certificate of Good Conduct is available to those individuals convicted of more than one crime (see Correction Law §§703-a and 703-b).

The State Board of Parole or any three members thereof, by unanimous vote, have the exclusive power to issue a certificate of good conduct to any person previously convicted of a crime either in this state or in any other jurisdiction. The minimum period of good conduct, which is based upon the most serious crime of which the individual has been convicted of, is a follows:

Misdemeanor	-	one year
C, D, E Felony	-	three years
A, B Felony	-	five years

This minimum period is measured either from the date of payment of any fine, the suspension of a sentence, or from the date of his/her unrevoked release from custody by parole, commutation or termination of his/her sentence. Criminal acts committed outside the state shall be classified as acts committed within the state based upon the maximum sentence that could have been imposed due to the conviction pursuant to the law of the foreign jurisdiction.

9. What criteria must be satisfied in order for the Board to issue a Certificate of Good Conduct?

The Board must be satisfied that the applicant has conducted himself in a manner warranting such issuance for a minimum period (see above) and that the relief to be granted is consistent with the rehabilitation of the applicant and public safety. Further, the Board must be satisfied that the applicant has demonstrated that there exists specific facts and circumstances and specific sections of New York State law that have an adverse impact on the applicant and warrant application for relief to be made in New York State.

10. What does a Certificate of Good Conduct do?

A Certificate of Good Conduct has a similar effect as a Certificate of Relief from Disabilities. It may be issued to remove all legal bars or disabilities or to remove only specific bars or disabilities. In addition, a Certificate of Good Conduct may restore the right of an individual to apply for public office.

11. Are Certificates of Relief from Disabilities or Certificates of Good Conduct permanent or temporary when issued? Can new certificates be granted to enlarge relief?

Whether these certificates are permanent or temporary depends upon the applicant's circumstances. Certificates of Relief from Disabilities and Certificates of Good Conduct are considered temporary. They continue until such time as either the court's authority to revoke the sentence has expired or is terminated or the individual is discharged from the board's supervision. While temporary, a court may revoke a certificate of relief from disabilities for violation of the conditions of the sentence and must revoke the certificate if the court revokes the sentence and commits the person to a state correctional institution. Similarly, while temporary, the Board of Parole may revoke either certificate for violation of the conditions of parole or release. In all cases, revocation must be upon notice and after an opportunity to be heard. If not revoked, certificates become permanent upon expiration or termination of the court's authority to revoke the sentence or the Board's jurisdiction over the offender (see Correction Law §§§702(4), 703(4), and 703-b (5)).

A court or the Board, whichever is applicable, also may subsequently issue a new Certificate of Relief from Disabilities or Certificate of Good Conduct enlarging the relief previously granted (see Correction Law §§§702(5), 703(2), and 703-b(4)).

12. Can a New York State court grant a Certificate of Relief from Disabilities to an individual convicted of a felony in another state, who later relocates and is transferred to New York State for supervision?

No. However, Correction Law §703(1)(b) states the Board of Parole shall have the power to issue a Certificate of Relief from Disabilities to any eligible offender who resides within the state while convicted by a court in another jurisdiction.

13. Can a court request an investigation before issuing a Certificate of Relief from Disabilities?

Yes. Correction Law §702(3) states that a "court may for the purpose of determining whether such certificate shall be issued, request its probation service to conduct an investigation of the applicant..." Further, DPCA's Investigations and Report Rule, specifically 9 NYCRR §350.8, establishes rules for certificate of relief from disabilities investigations and reports. See also response to question 4 with respect to pre-sentence investigations.

14. Does obtaining a certificate of relief from disabilities allow a convicted felon not otherwise permitted to vote, to register/re-register and vote? Does a probationer need a certificate to vote?

Yes, securing a certificate would permit a convicted felon who has lost voting privileges to register/re-register and vote. Only a convicted felon who is incarcerated or under parole supervision needs to secure a State certificate in order to restore voting privileges (see Election Law §5-106(2) of the Election Law and Correction Law § 701(2)).

With respect to probationers, a convicted felon sentenced to a straight probation sentence would not lose his/her right to vote. Any felony probationer also sentenced to up to six months' imprisonment would be able to register and vote upon release. Any felony probationer also sentenced to a term of intermittent imprisonment would be able to register and vote upon final completion of the term (see New York State Board of Election Formal Opinion #6, 1983).

15. Is it necessary for an offender to secure a state and federal Certificate of Relief from Disabilities or a Certificate of Good Conduct in order to possess a firearm, rifle, or shotgun?

Whether a State certificate is necessary depends upon an offender's criminal history and status. As to a Federal certificate, since October 1992, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) annual budget appropriation has prohibited the expenditure of any federal funds to investigate or act upon any Federal firearms disability applications submitted by any individual. This limitation on the permitted use of funds has continued over the years. However, it is always subject to change and it is recommended that periodic checks with regional ATF offices occur.

It is a crime in New York State (Criminal Possession of a Weapon in the Fourth Degree) for an offender convicted of a felony or serious offense, to possess a rifle or shotgun and any such conviction automatically excludes an individual from securing a firearms license (see Penal Law (PL) §§ 265.01(4) and 400.00(1)(c)). Exempted from prosecution is an individual who has been issued a Certificate of Good Conduct permitting possession (see PL§265.20(5)). After review of pertinent case law and written communication between the NYS Division of Criminal Justice Services and the federal ATF, it has been determined that

an individual who has received a Certificate of Relief from Disabilities under Correction Law §701 permitting possession of any such firearms, will qualify for an exemption under PL§265.20(5). The individual would still need to secure a license to legally possess such weapons and other criteria must be met (see PL§400.00).

In general, the Federal Gun Control Act of 1968 (GCA) prohibits certain categories of persons to ship, transport, receive, or possess firearms (see 18 U.S.C. §922(g)). Among categories of persons barred are any of the following individuals:

(1) those convicted of a crime which may be punishable by imprisonment for a term exceeding one year
(2) an unlawful user of or addicted to any controlled substance
(3) those subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner
(4) an illegal alien
(5) one discharged from the military under dishonorable conditions
(6) those convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV)

The definition of MCDV includes any offense classified as a "misdemeanor" under Federal or State law. This federal prohibition is applicable to federal, state, and local governmental employees in both their official and private capacities and federal violations are punishable by up to 10 years imprisonment (see 18 U.S.C. §§§921(a) (33), 922(g) (9), 924(a) (2), 925(a) (1); and 27 C.F.R. §§178.11 and 178.32). Additionally, under the GCA, a person is not considered convicted if he/she has been pardoned, had his civil rights restored, or the conviction was expunged or set aside, unless the pardon, expungement, or restoration expressly provides that the person may not ship, transport, posses, or receive firearms.

Noteworthy, a state Certificate of Relief from Disabilities or Certificate of Good Conduct may only remove New York State's statutory bar to apply for and receive a license to possess a firearm imposed upon those convicted of a felony or serious offense. It is the position of the ATF that **unless** an individual has had his or her rights fully restored, then there still exists a Federal disability or bar in this area.

According to the ATF, a person's civil rights have not been fully restored unless, under State law, that person is eligible to hold public office, register to vote at a general election and serve on a jury in a court of that state. As to ability to hold public office, a Certificate of Relief from Disabilities cannot restore eligibility for public office (see Correction Law §701(1)). However, a Certificate of Good Conduct granted by the New York State Board of Parole can restore a person's eligibility to hold public office. A person who has been sentenced to a state correctional institution loses his/her right to hold public office (see Civil Rights Law §79(1)). If he/she completes his/her maximum sentence of imprisonment or is discharged from parole, then by operation of New York law, this person may again lawfully run for public office and a certificate would not be needed to restore this right. Further, a person's right to hold public office is not forfeited upon conviction of a felony if the person

is given a probation sentence or not sentenced to a state correctional facility. However, if a person is holding a public office and is convicted of a felony while holding such office, the person would have to vacate that office.

As to right to serve on a jury, a convicted felon loses the right to serve on a jury (see Judiciary Law §510). This right is not automatically restored under New York law upon a person's completion of his/her criminal sentence, including probation or maximum term of imprisonment. The right to vote was discussed in question number 14, infra.

Federal authorities do not require that these aforementioned State certificates specifically mention an offender's ability to possess firearms. Presently, where either box (a) or (b) is checked by the court or Board of Parole on the signed certificate form (see DPCA-53 (04/04)), no Federal barrier exists and an individual may legally possess a firearm. However, as many members of the judiciary may still be under the impression that a Federal certificate would be necessary to overcome a Federal restriction, it is advisable that any investigation report familiarize the court in this area. Some courts may wish to expressly restrict permission for a firearms license where it is determined to be appropriate.

Lastly, it should be noted that the term "firearm" is defined in PL§265.00(3) to include any pistol or revolver and virtually all shotguns. However, federal law defines firearm more broadly to refer to all handguns and long guns.

NOTE: There are 3 boxes associated with a Certificate of Relief from Disabilities. Specifically, box (a) relieves the holder of all forfeitures, and of all disabilities and bars to employment, excluding the right to be eligible for public office, by virtue of the fact that the certificate is issued at the time of sentence. Box (b) relieves the holder of all disabilities and bars to employment, excluding the right to be eligible for public office. Box (c) relieves the holder of the forfeitures, disabilities or bars to employment enumerated in the certificate.

16. Where may forms or applications for Certificates of Relief from Disabilities and Certificates of Good Conduct be obtained?

Correction Law §705(1) states that such forms relating to Certificates of Relief from Disabilities shall be distributed by the State Director of Probation and Correctional Alternatives and is attached and forms relating to Certificates of Good Conduct shall be distributed by the Chairman of the Board of Parole.

17. Can an offender obtain a copy of a Certificate of Relief from Disabilities Investigation Report?

Last year, effective June 7, 2006, Correction Law §702(6) was amended governing certificates of relief from disabilities issued by courts. It now establishes that upon the court's receipt of a certificate of relief from disabilities investigation report from a probation department, the court shall provide a copy of the report, or direct that such report be provided to the applicant's attorney, or the applicant, if he/she has no attorney.

18. Can an individual receiving a certificate of relief from disabilities deny ever having been convicted of a crime?

No. A certificate of relief from disabilities does not authorize an individual with a criminal record to deny his/her conviction. For example, a job applicant cannot deny on an employment application that he/she has ever been convicted of a crime (see 1981 Op. Atty.Gen. (Inf.) 281).

Exhibit 12

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Find the Help You Need to Represent Yourself in NY Courts

Collateral Consequences

A criminal conviction ends with sentencing that can include many different kinds of punishments. See Sentencing to learn more. A conviction also brings other consequences that affect your life in many other ways. A conviction, or even an arrest can take away your rights, impose sanctions and disqualifications that affect your job, housing, government benefits, citizenship, student loans, and more. These are called Collateral Consequences or Invisible Punishments. The big problem is that you may not know about these consequences when you are Plea Bargaining or pleading guilty.

Collateral Consequences Basics
Find out the consequences outside of the criminal court system. Follow links to calculate the consequences for your crime or offense.

Adoption Consequences
Learn how a criminal conviction can affect your right to adopt or foster a child.

Voting Consequences
Read about how a felony conviction affects your right to vote.

Public Office Consequences
Learn how a misdemeanor or felony conviction can affect your ability to be a police officer, firefighter, notary, elected official or other public office job.

Immigration Consequences
A criminal conviction, or even an arrest, can impact your immigration status.

Student Loans Consequences
An adult criminal conviction may result in a loss of financial aid. Criminal convictions for drugs automatically stop federal student aid.

Employment Licenses Consequences
Many jobs require licenses before you can hold the job. Read how criminal convictions can prevent you from getting a license or can take your license away.

Sex Offender Registration Consequences
Sex offenders are listed on the NYS Sex Offender Registry and are barred from holding various jobs.

Related Information:

- Plea Bargaining
- Common Sentences
- Types of Crimes
- Getting Rights Back

Web page updated: October 20, 2016

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Find the Help You Need to Represent Yourself in NY Courts

Collateral Consequences Basics

Besides direct consequences that can include jail time, fines, and treatment, a criminal conviction can trigger many consequences outside of the criminal court system. These consequences can affect your current job, future job opportunities, housing choices, immigration status, etc. For example:

- A Class B Misdemeanor conviction, like possession of graffiti instruments or less than an ounce of marijuana, means you cannot live in a New York City Housing Authority apartment for at least 3 years after you finish your sentence.
- Two convictions for jumping a turnstile in the subway make a greencard holder deportable.
- Simple possession of a marijuana cigarette cuts off federal student loans for a year.

Finding out the Consequences

Your lawyer is supposed to tell you about the collateral consequences that come with any conviction, but your lawyer many not know about all the civil penalties.

Use the Collateral Consequences Calculators below to get an idea of what else can happen to you if you are convicted of a crime.

- Columbia Law School Collateral Consequences Calculator New York (NYC public housing and immigration consequences only)
- National Inventory of the Collateral Consequences of Conviction - New York

You can also look for information by choosing a topic from the Collateral Consequences menu.

Getting Rights Back

After a criminal conviction, sometimes you can get relief from the collateral consequences of your conviction by getting a special certificate. Visit Getting Rights Back.

Related Information:

- Collateral Consequences
- Plea Bargaining
- Getting Rights Back

Web page updated: February 9, 2017

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Find the Help You Need to Represent Yourself in NY Courts

Voting

You lose your right to vote while you are in prison or on parole for a felony conviction. If you are convicted of a felony and you are released from prison and are no longer on parole, you can vote. If you are convicted of a felony and your sentence is suspended, you can vote. If you are convicted of a felony and there was no prison sentence, you can vote. Your right to vote is automatically returned to you once you are out of state prison and off of parole. All you have to do is register, or re-register to vote.

If you want to vote while you are still on parole for a felony conviction, you can get a Certificate of Relief from Disabilities.

All other criminal convictions do not take away your right to vote. So, misdemeanor and violation convictions do not prevent you from voting even if you are serving time in jail.

Related Information:

- Getting Rights Back
- NYS Board of Elections

Web page updated: July 13, 2016

NYCOURTS.GOV

Find the Help You Need to Represent Yourself in NY Courts

Public Office Consequences

If you have been convicted of a felony or misdemeanor you may be barred from public office jobs, like a police officer, firefighter, court officer, or notary public. Public offices also include elected and appointed offices, like governor, judge, legislator, and local supervisors and commissioners. Police officers, corrections officers, parole and probation officers and district attorneys are also public offices. But, public office doesn't always mean a job working for the city or state. If you think you may want a public office job, or you hold one now, it is important to find out if your misdemeanor or felony conviction will prevent you from having the job. Visit Collateral Consequences Basics and use a calculator to learn more.

You can get a Certificate of Good Conduct so that you can apply for public office. But, there are some public offices that a Certificate of Good Conduct won't help with. A Certificate of Relief from Disabilities will never help with public office.

Related Information:

- Collateral Consequences Basics
- Certificate of Good Conduct

Web page updated: July 13, 2016

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Find the Help You Need to Represent Yourself in NY Courts

Immigration Consequences

If you are not a United States citizen and you are arrested or convicted of a crime, you face serious consequences in addition to the criminal sentence. Guilty pleas and convictions can lead to immediate detention and deportation. Even violations or non-violent misdemeanors, like shop-lifting, marijuana possession or turnstile jumping can lead to deportation. This can happen even if you have lived in the United States for a long time. Speak to your attorney. Visit Collateral Consequences Basics and use a calculator to learn more.

Undocumented

If you are out of status or undocumented when you are arrested, your fingerprints are sent to immigration. Immigration can issue a detainer or warrant at your arraignment or while you are in jail. This means that when the criminal case is over or you pay bail, you will not be released and you will be sent to an immigration judge. A criminal conviction may prevent you from getting residency, asylum, or a work permit in the future.

Green Card Holders

A criminal conviction could:

- Get you deported.
- Prevent you from becoming a citizen in the future
- Prevent you from renewing your green card
- Prevent you from travelling outside the country

If you have a criminal record, a new arrest can lead to an immigration detainer. This means that when the criminal case is over or you pay bail, you will not be released and you will be sent to an immigration judge.

Related Information:

- Collateral Consequences Basics
- LawHelp/NY
- Plea Bargaining

Web page updated: July 13, 2016

NYCOURTS.GOV

Find the Help You Need to Represent Yourself in NY Courts

Student Loans Consequences

Most college applications ask you for your criminal history and take it into consideration when deciding whether to admit you. Drug crimes trigger loss of financial aid (but Youthful Offender cases do not).

Drug Crimes

If you are receiving any federal grant, loan or work assistance when you are convicted of any offense involving possession or sale of drugs, including marijuana, you automatically lose your financial aid for a period of time starting on the date of the conviction. You are eligible to apply for financial aid again as follows:

Drug Possession:

- 1 conviction, 1 year
- 2 convictions, 2 years
- 3 or more convictions and you can't get financial aid

Drug Sale:

- 1 conviction, 2 years
- 2 or more convictions, you can't get financial aid

The period of time that you are suspended from getting financial aid can be shortened if you complete an OASAS certified drug rehab program and pass 2 unannounced drug tests.

Related Information:

- Collateral Consequences Basics
- Collateral Consequences
- Criminal Records

Web page updated: July 13, 2016

NYCOURTS.GOV

Find the Help You Need to Represent Yourself in NY Courts

Employment Licenses Consequences

Over 100 jobs require you to have a license, registration or certification by a state agency before you can work. Many laws prevent you from getting an employment license or take your license away when you have a criminal conviction. Some common examples include real estate, stockbroker, nursing, accountant, and security guard licenses.

Visit Collateral Consequences Basics to check if a specific crime or offense affects your employment license.

Getting Rights Back

If you want to get or renew a license for a job, but you are barred because of your criminal history, you may be able to get a Certificate of Relief from Disabilities or a Certificate of Good Conduct to lift the bar. Visit Getting Rights Back, to learn more. The Legal Action Center has a spreadsheet that may also help you see what the penalties are for different jobs and if they can be lifted.

Commercial Driver License

If you are convicted of any Driving Under the Influence (DUI) crime or offense, or refuse a chemical test, a Certificate of Relief from Disabilities cannot help you get back your commercial driver license. This is true even if it is your first offense, even if you were driving in a non-commercial vehicle when you were arrested, even if you have proof of complete rehabilitation, and even if the offense happened outside New York.

Related Information:

- Collateral Consequences Basics
- Getting Rights Back
- Surcharges and Fees

Web page updated: September 16, 2016

NYCOURTS.GOV

Find the Help You Need to Represent Yourself in NY Courts

Getting Rights Back

There are a number of laws and rules that bar people convicted of certain jobs from getting certain licenses, or having access to certain benefits, like public housing. This is why it is important to understand the Collateral Consequences of your criminal conviction when you are plea bargaining or sentenced. There are certain certificates called Certificate of Relief from Civil Disabilities and Certificate of Good Conduct that can remove the consequences. The certificates can get rights back that you lost because of your conviction. If you get one of these certificates you won't be automatically disqualified for a particular job or license. If you have a certificate when you apply for a job or occupational license, the employer or licensing agency must assume that you are rehabilitated unless there is something to say otherwise.

Certificate of Relief from Civil Disabilities
Learn how to apply for a CRD if you have been convicted of any number of misdemeanors but not more than one felony.

Certificate of Good Conduct
Read how to apply for a CGC if you were convicted of 2 or more felonies, or want to apply for a public office job.

Sealed Records: After 10 Years
Eligible individualts can have misdemeanors and certain felonies sealed under CPL 160.59. See if you qualify and learn how to ask the Court to seal your records.

Sealed Records: Drug-Related Crime
Certain drug-related felony and misdemeanor convictions can be conditionally sealed under CPL 160.58 if you have completed a drug treatment program. See if you qualify and learn how to ask the Court to seal your records.

Sex Offender Petition for Relief or Modification
Read about when and how a sex offender can ask to be removed from the registry or change his or her risk level.

Relief From Federal Firearms Disabilities In Guardianship Cases
Read the court rule about petitioning the court for relief from firearms disabilities in cases where a guardian was appointed.

Related Information:

- Collateral Consequences Basics
- Plea Bargaining
- Criminal Records Basics
- Sealed Records

Web page updated: December 5, 2017

Exhibit 13

U.S. General Services Administration

Frequently Asked Questions: Suspension & Debarment

What is Suspension and Debarment?

The S&D process protects the federal government from fraud, waste and abuse by using a number of tools to avoid doing business with non-responsible contractors. Suspensions, Proposals for Debarment, and Debarments are the most widely known tools as these actions are visible to the public via SAM (formerly EPLS). However, Hearings, Show Cause Letters, Requests for Information, which are not visible to the public, are also effective tools used to protect the Government and taxpayers' interests. Terminations of Review are also important as they inform the contractor under review that a determination has been made that the contractor is presently responsible and can continue conducting business with the Government.

What is the effect of Suspension or Debarment?

- Your name will be published as ineligible on the System for Award Management (SAM), a GSA administered website (http://www.sam.gov). Your suspension is effective throughout the Executive Branch of the Federal government and applies to procurement and non-procurement programs.
- Offers will not be solicited from, contracts will not be awarded to, existing contracts will not be renewed or otherwise extended for, and subcontracts requiring Government approval will not be approved for you by any agency in the Executive Branch of the Federal government, unless the head of the agency taking the contracting action or a designee states, in writing, the compelling reason for continued business dealings between you and the agency.
- You may not conduct business with the Federal government as an agent or representative of other contractors or of participants in Federal assistance programs, nor may you act as an individual surety to other Government contractors.
- No Government contractor may award to you a subcontract equal to or in excess of $30,000 unless there is a compelling reason to do so and the contractor first notifies the contracting officer and further complies with the provisions of FAR 9.405-2(b).
- No agency in the Executive Branch shall enter into, renew or extend a primary or lower-tier covered transaction in which you are either a participant or principal unless the head of the agency grants an exception in writing. (Covered transactions defined at 41 C.F.R. Section 105-68).

- Your affiliation with, or relationship to, any organization doing business with the Government will be carefully examined to determine the impact of those ties on the responsibility of that organization as a Government contractor or subcontractor.

Who can be Suspended or Debarred?

The FAR allows for contractors to be suspended or debarred. A contractor is any individual or organization that:

- Directly or indirectly submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract or subcontract; or
- Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor
- Those directly and indirectly involved in the wrongdoing or alleged wrongdoing

What are the causes for Suspension or Debarment?

- Commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal laws, receiving stolen property, an unfair trade practice
- Violation of antitrust statutes
- Willful, or a history of, failure to perform
- Violation of the Drug-Free Workplace Act
- Delinquent Federal taxes (more than $3,000)
- Knowing failure to disclose violation of criminal law
- Any other cause that affects present responsibility

What is the Suspension & Debarment process?

- Cases are referred to the SDO from many sources, including Office of Inspector General, voluntary & mandatory disclosures
- SDO makes a decision based on the referral
- Contractors are immediately listed on SAM (www.sam.gov) if they are suspended or proposed for debarment
- When suspended proposed for debarment, contractors may submit matters in opposition demonstrating present responsibility
- If requested, SDO may meet with contractor
- If additional facts are presented, SDO makes a final decision which is provided to the contractor
- For more details on GSA's Suspension & Debarment process, see Trainings and Presentations

What are my options after receiving a Suspension or Debarment letter?

Contractors receiving a Suspension or Debarment letter have an opportunity to respond before the SDO makes a final decision. If the contractor chooses to respond, its focus should be on its present responsibility to contract with the Federal Government. The contractor may also request to meet with the SDO to discuss its present responsibility in person.

The contractor's response provides the SDO with more information before making a final decision.

What is the difference between Suspension and Debarment?

Suspension

- Immediate Need
- A temporary measure; there is a twelve month limit
- Usually used pending the completion of investigation or legal proceedings
- Based upon adequate evidence, usually an indictment

Debarment

- Usually three years in length
- Based upon a preponderance of the evidence, usually a conviction

Are there any options besides Suspension or Debarment?

The SDO may decide to take no action against a contractor whom she feels is presently responsible. If the SDO feels that she needs further information before making a decision, she has the option to send the contractor a Request for Information letter or a Show Cause Letter.

Requests for Information do not immediately result in ineligibility and are used to gather information. Show Cause Letters also do not immediately result in ineligibility and are used to gather current information and learn the contractor's position. Show Cause Letters are discretionary, and are used when cause for debarment exists, but the agency wants to provide the contractor an opportunity to present information before taking action.

The SDO may also decide to enter into an Administrative Compliance Agreement. These agreements document remedial measures taken to prevent reoccurrence and often include outside and independent review/audits by consultants. They generally last three years. Current Administrative Compliance Agreements can be found at https://www.fapiis.gov/fapiis/index.jsp

How do I refer a contractor who should be considered for Suspension or Debarment?

All referrals may be sent to suspension-and-debarment@gsa.gov.

What is the lead-agency process?

The Interagency Suspension & Debarment Committee coordinates referrals so that agencies have an opportunity to be involved with cases that may affect their missions. One agency will be deemed the "lead" agency and will make the ultimate decision as to what action, if any, will be taken.

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U.S. General Services Administration

Suspension and Debarment Division

GSA implements government-wide regulations that help agencies conduct business.

Suspension & Debarment

The Suspension & Debarment Division (S&D) processes suspension and debarment cases and provides direct support to GSA's Suspension & Debarment Official.

- Suspension and Debarment Official
- Frequently Asked Questions

Eligibility Determinations

Determinations of Eligibility are made by S&D for entities to use GSA Sources of Supply. S&D receives requests from various entities to determine whether they are eligible to use GSA Sources of Supply (limited to GSA Schedules).

- Eligibility Determination Process

Agency Protests

The Suspension & Debarment Division issues agency protest decisions and provides direct support to GSA's Agency Protest Official.

- Agency Protest Official
- Agency Protest Process
- Types of Protests

Training and Presentations

- What You Need to Know When Appearing Before the GSA SDO [PPTX - 854 KB]
- Suspension & Debarment--What the Acquisition Workforce Needs to Know [PPTX - 2 MB]
- Suspension & Debarment--What Small Businesses Need to Know [PPTX - 2 MB]
- Thinking Through the Suspension & Debarment of a Foreign Corrupt Practices Act Violation [PPTX - 2 MB]

Helpful Links

- State and Local Program Information
- Federal Surplus Property Eligibility Requirements
- GSA Order ADM 4800.2I, Eligibility to Use GSA Sources of Supply and Services [PDF - 444 KB]
- List of Eligible Executive Agencies [PDF - 116 KB]
- List of Other Eligible Users [PDF - 94 KB]
- List of Eligible International Organizations [PDF - 92 KB]
- Bite-Sized Videos on Hot Questions in Suspension & Debarment
- Suspension & Debarment: What Makes a Successful Meeting?
- Suspension & Debarment: The Fundamentals

CONTACTS

Suspension & Debarment Division

- suspension-and-debarment@gsa.gov

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Exhibit 14

NYS Nursing:License Requirements

General Requirements | Fees | Partial Refunds | Moral Character Requirements | Education Requirements | Examination Requirements | Limited Permits | Nurses Licensed in Another State

General Requirements

In order to provide nursing services as a registered professional nurse (RN) or a licensed practical nurse (LPN) in New York State, you must by licensed and registered by the New York State Education Department (NYSED).

To be licensed and registered as an RN in New York State, you must:

- be of good moral character;
- be at least eighteen years of age;
- meet education requirements;
- meet examination requirements; and,
- apply for an RN license with NYSED.

To be licensed and registered as an LPN in New York State, you must:

- be of good moral character;
- be at least seventeen years of age;
- meet education requirements;
- meet examination requirements; and,
- apply for an LPN license with NYSED.

In New York State, some nursing school graduates (who have applied for an RN or LPN license and a limited permit) may qualify to practice nursing before being licensed and registered as an RN or LPN. NYSED issues limited permits to qualified nursing school graduates, allowing them to temporarily practice nursing under RN supervision.

You can download license and limited permit application forms (and

instructions for filling them out) from this website. You must send all required application forms and fees to the address specified on each form. It is your responsibility to follow up with anyone you have asked to send forms, materials or information to NYSED.

Laws that govern RN and LPN licensure are included in Education Law Article 139 and 8 NYCRR Part 64.

You should also read the general licensing information applicable for all professions.

After you qualify for an RN or LPN license, NYSED will issue you a **license parchment** and a **registration certificate.**

- Your **nursing license** is valid for life, unless it is surrendered or revoked, annulled or suspended by the New York State Board of Regents.
- Your **registration certificate** will authorize you to practice nursing for about 3 years. Thereafter, you must renew your registration every 3 years to continue to practice nursing. You are not legally allowed to practice nursing while your registration is expired.

Fees

The fee for licensure and first registration is $143.

The fee for a limited permit is $35.

Fees are subject to change. The fee due is the one in law when your application is received (unless fees are increased retroactively). You will be billed for the difference if fees have been increased.

- Do not send cash.
- Make your personal check or money order payable to the New York State Education Department. Your cancelled check is your receipt.
- Mail your application and fee to:
  NYS Education Department
  Office of the Professions
  PO Box 22063
  Albany, NY 12201

NOTE: Payment submitted from outside the United States should be made by check or draft on a United States bank and in United States currency; payments submitted in any other form will not be accepted and will be returned.

Partial Refunds

Individuals who withdraw their licensure application may be entitled to a partial refund.

- For the procedure to withdraw your application, contact the Nurse Unit by e-mailing opunit4@nysed.gov or by calling 518-474-3817 ext. 280 or by faxing 518-474-3398.
- The State Education Department is not responsible for any fees paid to an outside testing or credentials verification agency.

If you withdraw your application, obtain a refund, and then decide to seek New York State licensure at a later date, you will be considered a new applicant, and you will be required to pay the licensure and registration fees and meet the licensure requirements in place at the time you reapply.

Moral Character Requirements

You must demonstrate that you are currently of good moral character in order to be licensed or registered as an RN or LPN. When you apply for an RN or LPN license or to renew your registration, you will be required to answer the following questions:

- Have you been found guilty after trial, or pleaded guilty, no contest or nolo contendere to a crime (felony or misdemeanor) in any court?
- Are criminal charges pending against you in any court? Has any licensing or disciplinary authority refused to issue you a license or ever revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, refused to renew a professional licensed or certificate held by you now or previously, or ever fined, censured, reprimanded or otherwise disciplined you?
- Are charges pending against you in any jurisdiction for any sort of professional misconduct?
- Has any hospital or licensed facility restricted or terminated your professional

training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?

A "yes answer" to one or more of these questions will not necessarily disqualify you from a license or a registration. The New York State Education Department decides on a case by case basis whether prior criminal conviction(s) or other issues will disqualify the applicant from being licensed or registered as an RN or LPN.

Education Requirements

FRAUD ALERT: Don't make the costly mistake of attending a "nursing school" in New York that will not qualify you to be licensed as an RN or LPN!! Before you enroll in or pay for a nursing education program in New York, **VERIFY** that it is a New York State Education Department registered RN or LPN education program. A list of these nursing education programs is on this site.

Registered Professional Nursing (RN) Education Requirements

To meet the education requirements for an RN license, you must graduate from an nursing education program acceptable to the New York State Education Department (NYSED) - and - complete child abuse reporting coursework acceptable to NYSED (or qualify for an exemption). You will also have to complete infection control coursework acceptable to NYSED (or qualify for an exemption).

Acceptable Nursing Education Programs

You must graduate from a nursing education program that meets one of the three criteria below.

1. An RN education program (Associate's, Bachelor's or Master's degree or Diploma program) registered by NYSED as RN license qualifying.

   -OR-

2. A general nursing education program located in a country outside of the United States or its territories, which is acceptable to NYSED. You will be required to

Exhibit 15

CENTER FOR COMMUNITY ALTERNATIVES
INNOVATIVE SOLUTIONS FOR JUSTICE

CRIMINAL HISTORY SCREENING IN COLLEGE ADMISSIONS

A GUIDE FOR ATTORNEYS REPRESENTING COLLEGE APPLICANTS AND STUDENTS DURING AND AFTER CRIMINAL PROCEEDINGS

January 2013 Edition

Funding for this Guide was provided by the New York Bar Foundation

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www.communityalternatives.org

A GUIDE FOR ATTORNEYS REPRESENTING COLLEGE APPLICANTS AND STUDENTS DURING AND AFTER CRIMINAL PROCEEDINGS

INTRODUCTION

This Guide for Attorneys is the product of a journey that began with our clients. The Center for Community Alternatives (CCA) has long had a Reentry Clinic which assists people with criminal histories in overcoming many of the barriers they face because of their past convictions. Many of our Reentry Clinic clients have applied to college, and over the years they have shared with us the increasing array of barriers they face to admission because of their criminal records. In fact, one local community college had an outright bar to admission, informing potential applicants with past felony convictions that they "need not apply."

Our clients' experiences and difficulties compelled us to explore this problem further. In 2010, CCA partnered with the Association of Collegiate Registrars and Admissions Officers (AACRAO) to survey collegiate admissions officers about their policies and practices with regard to applicants who have past criminal justice involvement. This partnership led to CCA's ground-breaking report, *"The Use of Criminal History Records in College Admissions Reconsidered,"* which not only identifies the growing problem of colleges screening applicants for past criminal justice involvement, but also discusses much needed policy changes.

Our journey did not end with this report. Since issuing it, we have received countless calls from defense attorneys whose clients are either enrolled in college or are college-bound and are facing criminal charges. They want to know what strategies they can use to ensure that their clients can still pursue their dreams of achieving a college degree. We also frequently receive telephone calls from attorneys whose former clients have called to ask about how their past conviction will affect their ability to get accepted into a college, or who are facing questions on college applications that seem to require the disclosure of sealed or confidential information.

Over the past two years, these telephone calls have led us to develop a number of strategies that defense attorneys can utilize to protect their clients' dreams of graduating from college. Thanks to a grant from the New York Bar Foundation, we now have the opportunity to put these strategies into writing in this Guide.

A word about language. As we discuss further in this Guide, we live in a society that perpetually punishes people for having a past conviction. One common form of punishment is to attach

dehumanizing language to such individuals. A few years ago, the NuLeadership Policy Group issued an open letter calling for an end to this common practice, stating as follows:

> When we are not called mad dogs, animals, predators, offenders and other derogatory terms, we are referred to as inmates, convicts, prisoners and felons. All terms devoid of humanness which identify us as "things" rather than as people. While these terms have achieved a degree of acceptance, and are the "official" language of the media, law enforcement, the prison industrial complex and public policy agencies, they are no longer acceptable for us and we are asking that you stop using them.
>
> In an effort to assist our transition from prison to our communities as responsible citizens and to create a more positive human image of ourselves, we are asking everyone to stop using these negative terms and to simply refer to us as PEOPLE. PEOPLE currently or formerly incarcerated, PEOPLE on parole, PEOPLE recently released from prison, PEOPLE in prison, PEOPLE with criminal convictions, but PEOPLE.

Throughout this Guide, we have attempted to fully honor the NuLeadership's request, and we refer to people with past convictions as people, not as ex-offenders, ex-convicts, etc.

In a similar vein, for years courts across this nation have clung to the legal fiction that there is a distinction between "direct" consequences of a criminal conviction (that is, the punishment pronounced by the sentencing court), and "collateral" consequences of a criminal conviction (that is, the life-altering consequences that are seldom discussed in court). This legal fiction has been fostered to prevent people from withdrawing their pleas after being confronted with a punishment for their conviction of which they were not aware when they decided to plead guilty. In 2010, the United States Supreme Court rejected this legal fiction in *Padilla v. Kentucky*, a decision which is discussed further in this Guide. Throughout this Guide, we too generally avoid using terminology that promotes this legal fiction, instead using terms that better reflect reality, such as "lifelong consequences," "enmeshed consequences" or "invisible consequences." We use the term "collateral consequences" only when necessary to avoid confusion.

With the foregoing in mind, we hope that you find this Guide to be a beneficial tool for more effective advocacy. We also hope that in some small way this Guide will help you open the door to education for your clients, enriching their lives, increasing their opportunities, and making our communities safer places for us all to live.

ACKNOWLEDGMENTS

Funding for this Guide was provided by the New York Bar Foundation.

We are indebted to our colleague McGregor Smyth, formerly the Managing Attorney of the Civil Action Practice at The Bronx Defenders and currently the Executive Director of New York Lawyers for the Public Interest. As you will see, throughout this Guide we rely on McGregor's sage advice and well-reasoned articles for strategies and best practices for defense attorneys.

DISCLAIMER

Nothing contained in this Guide should be considered legal advice. We have attempted to provide information that is current and topical. However, because the law and policies of institutions of higher education change so rapidly, we cannot guarantee that this information will always be up-to-date or correct.

Because this Guide was written for New York defense lawyers, much of it (particularly Parts V and the Appendix) focus solely on New York law. Nonetheless, much of the advice and advocacy suggestions in this Guide are applicable outside of New York.

USE OF THIS GUIDE FOR PURPOSES OTHER THAN CLIENT ADVICE AND ADVOCACY

If you would like to use this Guide or portions of it for training or CLE purposes, whether oral or print, please contact the Justice Strategies unit of the Center for Community Alternatives. Questions about the availability of CCA staff to conduct training or CLEs related to this Guide should also be directed to CCA's Justice Strategies unit.

JUSTICE STRATEGIES

Substantive questions about this Guide and the information contained herein as well as questions about its use should be directed to CCA's Co-Directors of Justice Strategies:

Alan Rosenthal, Esq. - (315) 422-5638, ext. 227, arosenthal@communityalternatives.org

Patricia Warth, Esq. - (315) 422-5638, ext. 229, pwarth@communityalternatives.org

Table of Contents

Part I
THE GROWTH OF CRIMINAL HISTORY SCREENING IN COLLEGE ADMISSIONS

The enmeshed or "collateral" consequences of a criminal conviction affect people long after they have paid their debt to society, creating barriers to employment, housing, civic participation and to a rapidly growing extent, a college education. In recent years, colleges and universities across the United States have increasingly asked applicants about past criminal justice involvement on admissions applications, conducted criminal background checks as part of the application process, and created exclusionary policies based on the information disclosed by applicants or the background checks.[1]

There is no evidence that students with criminal history records commit crimes on campus at a rate any higher than other students. Yet, a few high profile crimes and concerns about campus safety and institutional liability have led to admissions policies that now require prospective applicants to disclose their criminal records and even their secondary school disciplinary history. Since 2006, the Common Application,[2] which is currently used by 488 universities and colleges, has included questions about both criminal convictions and school disciplinary records.[3] Many colleges that do not use the Common Application also include such questions on their applications.

The Center for Community Alternatives (CCA) in partnership with the American Association of Collegiate Registrars and Admission Officers (AACRAO) conducted a nation-wide survey to explore the use of criminal records in college applications and admissions and determine how widespread the use of criminal records is. In 2010 CCA released a pioneering report discussing the findings of the survey and the depth of the issue, entitled *The Use of Criminal History*

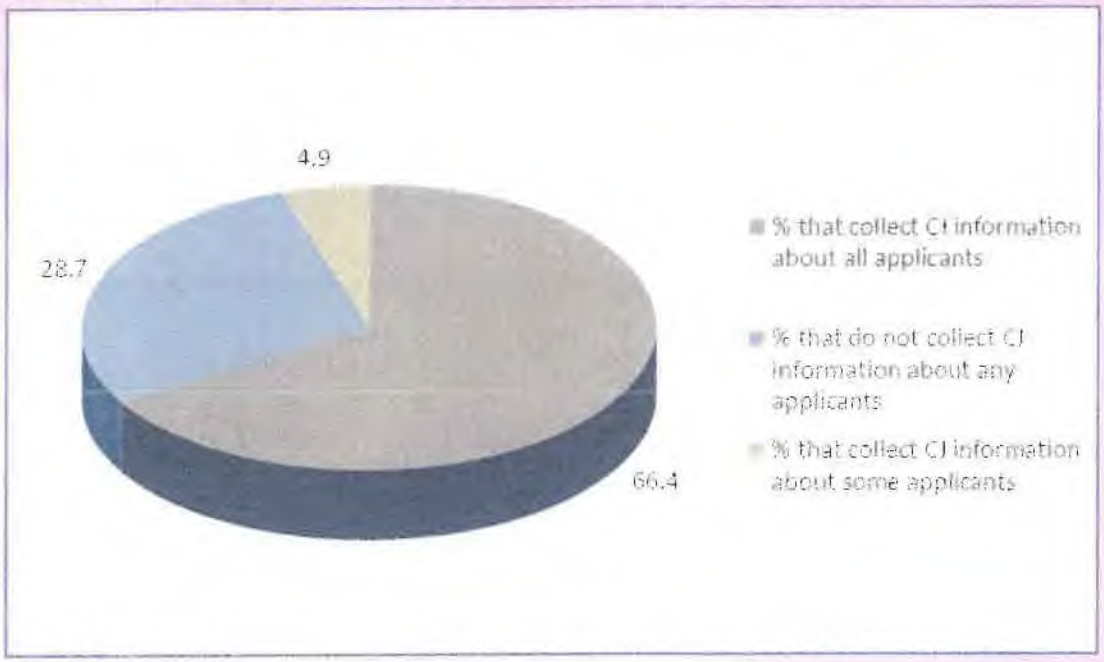
[1] Center for Community Alternatives and National H.I.R.E. Network. *Closing the Doors to Higher Education: Another Collateral Consequence of a Criminal Conviction*, (2008) available at www.communityalternatives.org/pdf/HigherEd.pdf.

[2] The Common Application is a not-for-profit membership organization that provides a common, standardized college application for use by its member organization. The application is available in online and print version for First-year and Transfer Applications. By using this one application, students may apply to multiple schools who are organization members.

[3] Jaschik, S. Innocent (Applicant) Until Proven Guilty. *Inside Higher Ed* (March 6, 2007) available at http://www.insidehighered.com/news/2007/03/06/common.

Records in College Admissions Reconsidered.[4] Among other findings, the survey discovered that a majority of the responding colleges collect criminal justice information in the application process. As shown in Figure 1 below, 66.4% of colleges collect criminal justice information.

Figure 1
Practices regarding the collection of criminal justice information



The number of colleges that are members of the Common Application and accept their applications has more than doubled in the past 10 years, so it is anticipated that the use of criminal records in admissions will continue to be a growing problem. Nonetheless, a significant minority - 38% - of the colleges that responded to the CCA survey do not consider criminal justice information in the application process, and none of these colleges indicated any concern that this policy had diminished safety on their campuses.[5]

Current Practices

There are two primary methods through which colleges and universities collect criminal history information: self-disclosure in response to questions on the application; and criminal background checks. Though self-disclosure is the most common practice, 20% of the colleges that responded indicated that they engage in some form of background screening, either in

[4] Center for Community Alternatives, *The Use of Criminal History Records in College Admissions Reconsidered*, (2010) available at http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf.
[5] *Id.*

addition to or instead of self-disclosure.[6] For the colleges that require self-disclosure on the application, the inquiry may not end with the application. An affirmative response to the self-disclosure question may give rise to a request for additional information or a background check. Examples of information that some colleges request once they learn of an applicant's criminal conviction include:

- Certificate of Disposition
- Letter from parole or probation officer
- Certificate of Relief from Disabilities
- Letter of explanation
- Criminal History Record (Some SUNY colleges specifically require applicants to provide a copy of their personally-obtained Division of Criminal Justice Services (DCJS) Criminal History Record.)

In a recent SUNY draft policy statement (FAQ) all campus admissions offices are being advised that they must request the Criminal History Record from applicants who respond affirmatively to the self-disclosure question. This practice requires an applicant to make a request directly to DCJS to obtain his or her own criminal history record, at his or her own expense, and to submit it to the admissions office. This procedure is particularly troublesome for several reasons. Pursuant to 9 NYCRR § 6050.1, a person may request his or her own DCJS Criminal History Record for personal use and to confirm the accuracy of the criminal history information. The Criminal History Record provided by DCJS to an individual requesting his or her own record is for the requester's "eyes only" as it is an "unsuppressed" copy meaning that it includes arrests and dispositions that have been sealed and "convictions" that resulted in Youthful Offender adjudications that are confidential and are not considered criminal convictions. It is ironic that the instructions to the online SUNY application instruction sheet indicate that an applicant should not disclose a Youthful Offender adjudication, but when an applicant is required to provide the campus admissions office with a DCJS Criminal History Record, the confidential Youthful Offender information contained in that record is improperly revealed and stripped of its confidential nature.

Not all affirmative responses give rise to an automatic exclusion, but many colleges have created at least some criminal justice-related automatic bars to admission. Violent felony convictions and sex offense convictions are the most likely to trigger automatic denial of admission.[7] Almost forty percent of colleges surveyed require that prospective students have completed any term of community supervision (probation or parole) before they can be admitted.[8]

[6] *Id.*
[7] *Id.*
[8] *Id.*

Examples of Application Questions

College applications differ from college to college and among the various system-wide applications and there is a wide variation when it comes to how the criminal history inquiry is posed. The questions range from those applications that limit the question to felony convictions to other applications that broadly ask about any arrest, even if the arrest did not result in a criminal conviction. Still other applications do not even ask about criminal history. As discussed later in this Guide, being aware of these variations may help you work with a college applicant to develop a strategy that enhances his or her chances for admission. Below are some examples of the questions about criminal history that appear on admissions applications:

Common Application:

Have you ever been adjudicated guilty or convicted of a misdemeanor, felony, or other crime?
○ Yes ○ No
[Note that you are not required to answer "yes" to this question, or provide an explanation, if the criminal adjudication or conviction has been expunged, sealed, annulled, pardoned, destroyed, erased, impounded, or otherwise ordered by a court to be kept confidential.]

SUNY [Application Services Center (ASC) online application]:

Have you been convicted of a felony? □ Yes □ No

The instructions to the SUNY ASC application provide guidance to the applicant as follows: A felony in NY State law is defined as a crime for which more than one year in prison may be imposed. The felony question applies if you have been convicted as an adult. If you have been adjudicated as having juvenile delinquent or youthful offender status, you are required to respond to the felony question 20a by indicating a response of "no."
It is interesting to note that not all SUNY schools ask for self-disclosure in the same way. For those applicants who use an application to a particular campus instead of the ASC application, the inquiry may be:

Have you ever been convicted of a crime? □ Yes □ No

There may be no instruction giving guidance as there is with the ASC application.

Depending upon the school the individual is applying to, the applicant may have a choice as to which application to use. For example, a student applying to SUNY New Paltz could elect to apply via the Common Application or the SUNY ASC application.[9]

[9] SUNY New Paltz is one of 11 of the 64 SUNY campuses that is a member of the Common Application.

Other Examples:

There are colleges that require extensive disclosure about criminal history that extends well beyond a felony or misdemeanor conviction. Below are examples of questions that appear on some far-reaching applications:

- Have you been adjudicated, processed, involved in pretrial diversion or entered into a contract through juvenile court, or arrested without a conviction? ○ Yes ○ No
- Have you ever been pardoned or had your record expunged in any court? If so, please provide details as to the crime and conviction. ○ Yes ○ No
- Have you ever entered into any pretrial diversion program as an adult? ○ Yes ○ No
- Have you been arrested for a crime or an offense? ○ Yes ○ No

These questions require applicants to disclose not only arrests that have resulted in criminal convictions, but also arrests for charges that have been dismissed, sealed, expunged, acquitted, pardoned, etc. For example, applicants who have been arrested in New York may be asked about arrests that resulted in a dismissal (and thus are sealed under CPL § 160.50), or a non-criminal offense (which may be sealed under CPL § 160.55), or a Youthful Offender adjudication, (which are deemed confidential under CPL § 720.35). Though these far-reaching questions are of debatable legality and clearly undermine the purpose of New York's sealing and Youthful Offender statutes, there is no law in New York that explicitly prohibits colleges from asking about or considering sealed arrests or arrests that resulted in Youthful Offender adjudications.[10]

These questions are likely to be confusing to college applicants who have been arrested, but whose arrest resulted in a sealing, Youthful Offender adjudication, expungement order, etc. These individuals have often been told by the judge and/or their defense lawyer that they need not disclose these arrests. But should they elect not to disclose, and risk that the college will learn of the arrest and act adversely against them assuming that they "lied" on the application, or should they disclose the arrest and risk not being accepted because of the arrest?

For a more thorough analysis of how to advise clients to answer the criminal history questions on college applications in light of the legal effects of New York's sealing statutes, conditional sealing, Youthful Offender and Juvenile Delinquency adjudications and other dispositions, see Part V of this Guide.

[10] Human Rights Law § 296(16) prohibits employers and occupational licensing agencies from asking about or considering sealed arrests and arrests that resulted in a Youthful Offender adjudication, but the statute does not extend its protections to the domain of higher education. There is an argument that for arrests that are sealed pursuant to CPL § 160.50, the arrest is a "legal nullity" that need not be disclosed. See CPL § 160.60.

Part II
CRIMINAL JUSTICE INVOLVEMENT: THE POTENTIAL IMPACT ON FEDERAL STUDENT LOAN ASSISTANCE

While many criminal defense attorneys are aware that a person's involvement in the criminal justice system may affect his or her ability to receive federal student loan assistance, there is confusion about the specifics of this impact. Convictions for what types of offenses might affect eligibility for student loan assistance? Does a conviction bar eligibility for life? Do only criminal convictions affect student loan eligibility, or can convictions for non-criminal offenses have an impact as well? These are just some of the commonly asked questions. To answer these questions and others, we begin with the general rule and then address the specifics.

The General Rule

A student's eligibility for any grant, loan, or work assistance is automatically *suspended* if the student is convicted of any *offense* under any state or Federal law involving the possession or sale of a *controlled substance*. This automatic suspension applies *only* if the conviction stems from conduct occurring while the person was receiving student aid. *See* 20 U.S.C. § 1091(r)(1).

The Specifics

• The automatic suspension applies only if the conviction involves conduct that occurred while the student was receiving federal student loans.

Prior to 2006, the automatic suspension applied to convictions stemming from conduct that occurred even when the student was not in receipt of federal student loans. But in early 2006, federal law was amended to narrow the student loan eligibility suspension to only convictions for conduct that occurred while the student was in receipt of federal student loans. *See* Pub. L. No. 109-71, § 8021, 120 Stat 4 (February, 2006).

The Federal Application for Federal Student Aid (FAFSA) application has been updated to reflect this amendment. Question #23 now asks the following: *"Have you been convicted for the possession or sale of illegal drugs for an offense that* occurred while you were receiving federal student aid (grants, loans, and/or work *study)?"* Applicants are specifically instructed to answer "No" if the offense was

for conduct that occurred while the applicant was not in receipt of federal student loan assistance.

• *The automatic suspension can apply to criminal* and *non-criminal offenses involving controlled offenses.*

20 USC § 1091(r)(1) suspends eligibility for federal student loan assistance upon a student's conviction for *"any offense"* involving a *"controlled substance."* "Offense" can include non-criminal as well as criminal offenses. To define "controlled substance," 20 USC § 1091(r)(3) incorporates the definition of "controlled offenses" set forth under 21 USC § 802(6), which includes marijuana. Thus, a student's conviction for Unlawful Possession of Marijuana under New York Penal Law § 221.05 will result in the student's suspension for eligibility for federal student loan assistance, despite the fact that this is a non-criminal offense.

• The automatic suspension applies to any grant, loan, or work assistance as defined in 20 U.S.C. § 1070 et seq. and 42 USC § 2751 et seq.

20 USC § 1091(r)(1) specifically suspends eligibility for "any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of Title 42." Chapter 28 of Title 20, entitled "Higher Education Resources and Student Assistance" is found at 20 USC § 1070, *et seq.* while part C of subchapter I of chapter 34 of Title 42 refers to "Federal Work Study Programs," which is found at 42 USC § 2751 *et seq.*

• *The period of the automatic suspension depends upon the type of conviction and the number of prior offenses.*

The duration of the suspension begins on *the date of the conviction* and ends after the following intervals:

Type of offense	Ineligibility Period for 1st Offense	Ineligibility Period for 2nd Offense	Ineligibility Period for 3rd Offense
Possession of a controlled substance	1 year	2 years	Indefinite
Sale of a controlled substance	2 years	Indefinite	Indefinite

• ***Under certain circumstances, the ineligible student may be able to receive federal student loan assistance prior to the expiration of the suspension period.***

There are three ways by which a student may prove his or her "rehabilitation" and thereby be permitted to receive federal student loan assistance prior to the expiration of the suspension period.

First: The student *completes a drug rehabilitation program* that: (i) complies with criteria established by the Secretary of Education; and (ii) includes two unannounced drug tests. *See* 20 USC § 1091(r)(2)(A). The Secretary of Education's criteria for drug rehabilitation programs are found at 34 CFR § 668.40, and include programs that: have received or are qualified to receive funds under a Federal, State or local government program; are administered by a Federal, State, or local government agency or court; have received or are qualified to receive payment from Federally or State licensed insurance company; or are administered or recognized by a Federally or State licensed hospital, health clinic, or medical doctor.

Second: As part of a drug rehabilitation that meets the criteria established by the Secretary of Education (set forth above), the student successfully passes two *unannounced drug tests*. *See* 20 USC § 1091(r)(2)(B).

Third: The student's conviction is "reversed, set aside, or otherwise rendered nugatory." *See* 20 USC § 1091(r)(2)(C).

The Hope Scholarship Tax Credit

A conviction for a controlled substance offense may also limit a student's eligibility for the Hope Tax Credit. The Hope Tax Credit allows for tax credits to students or their taxpaying family member, who have incurred education expenses related to the first two years of post secondary education. *See generally* 26 USC § 25A. This tax credit, however, "shall not be allowed for qualified tuition and related expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends." *See* 26 USC § 25A (b)(2)(D).

Part III
DUTY TO COUNSEL CLIENTS ON ENMESHED CONSEQUENCES OF CRIMINAL JUSTICE INVOLVEMENT

Introduction

For the past three decades, a growing number of professional organizations, including local, state, and national bar organizations, have recognized that defense counsel have a duty to advise their clients of the "invisible" consequences of a criminal conviction – that is, those penalties that are not pronounced in court at sentencing, but which flow from the conviction and have the potential to significantly impact a person's life. The recognition of this duty arises from the reality that in today's world, a criminal conviction results in life-long punishment.

There are at least three phenomena that have contributed to this perpetual punishment:

1) Decision-makers in the domains of employment, housing, volunteer work and other areas are increasingly more likely to conduct criminal history record checks on applicants.[11]

2) The incredible growth of private, for-profit background check companies has made it easier and less-expensive to obtain a person's criminal history record. As noted by a recent report: *"Despite its promotion as a public service, the sale of criminal background reports has become a big business generating billions of dollars in revenue. The Internet has facilitated the emergence* of scores of online background screening companies, with many daiming instant access to *millions of databases."*[12]

3) Our "tough on crime" policies have not only resulted in harsher sentencing laws, but also a growing array of barriers to employment, housing, public benefits, and student aid for people with criminal records. The existence of these needless barriers to living a full, law-abiding life in the community was aptly captured in a recent report of a special committee of the New York State Bar Association, which concluded as follows:

[11] This growing trend of colleges and universities to conduct background checks is discussed in CCA's report, *"The Use of Criminal History Records in College Admissions Reconsidered."*

[12] National Consumer Law Center, "Broken Records: How Errors by Criminal Background Check Companies Harm Workers and Businesses," (2012), available at: http://www.nclc.org/issues/broken-records.html

New York has unwittingly constructed formidable barriers to those attempting to re-enter society following interaction with the criminal justice system... As they presently stand, these collateral consequences hinder successful reintegration by restricting access to the essential features of a law-abiding and dignified life - family, shelter, work, civic participation, and financial stability. These barriers doom us all: those blocked from successful re-entry find themselves on the road to recidivism, and the rest of us pay the price.[13]

The Standards and Guidelines

Professional organizations now recognize that because of the life-long, albeit "invisible," nature of the consequences of a criminal conviction, people arrested for a criminal offense cannot make informed decisions about possible dispositions of their cases unless the "invisible" penalties are revealed to them. A sampling of these professional standards and guidelines requiring counsel to identify and discuss these so-called "invisible penalties" – most often referred to as "collateral consequences" – is set forth below:

AMERICAN BAR ASSOCIATION: CRIMINAL JUSTICE STANDARDS

In 1993, the American Bar Association (ABA) adopted "black letter" standards for criminal defense lawyers, prosecutors and judges which are set forth in the *"ABA Standards for Criminal Justice."* The section pertaining to guilty pleas, *Criminal Justice Standards on Pleas of Guilty*, includes the following standard:

> **Standard 14-3.2. Responsibilities of Defense Counsel**
>
> (f) To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from the entry of the contemplated plea.

Ten years later, in 2003, the American Bar Association went a significant step further, adopting *Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons.* One commentator referred to these new standards as the "first effort since

[13] Special Committee of the New York State Bar Association, "Re-Entry and Reintegration: The Road to Public Safety," (available at the publications section of the New York State Bar Association at www.nysba.org), at 443.

the 1970s to address the collateral legal consequences of a conviction in a coherent and comprehensive fashion."[14]

The ABA's comprehensive approach to hidden punishments includes standards that are designed to accomplish the following: i) *expose hidden punishments* by requiring legislatures to collect and compile all collateral punishments in a single part of the jurisdiction's criminal code; ii) *limit the existence of hidden sanctions* by prohibiting legislatures from imposing collateral sanctions that are not necessary to promote safety; iii) *ensure that defendants are notified* of hidden sanctions; iv) *require consideration of* hidden sanctions by requiring judges to consider such sanctions when deciding upon a sentence; v) *ameliorate* hidden sanctions by calling upon legislatures to enact laws and procedures that allow for review or modification of and waiver or relief from these sanctions; and vi) *prohibit* unreasonable discrimination based upon a person's conviction history.

Unfortunately, these ABA standards differentiate between "collateral sanctions" and "discretionary disqualifications" stating that the stronger standards apply to the former while the weaker ones apply to the latter. "Collateral sanctions" are defined as "a legal penalty, disability or disadvantage, however, denominated, that is imposed on a person automatically upon that person's conviction for a felony misdemeanor or other offense, even if it is not included in the sentence," while "discretionary disqualification is "a penalty, disability or disadvantage, however denominated, that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense on grounds related to the conviction." The financial aid bars described in Part II of this manual are clearly "collateral sanctions," necessitating that, at the very least and *prior* to the entry of a guilty plea, defense counsel identify and counsel clients on this hidden sanction, and the possible dispositions that can ameliorate or avoid it.

The barriers to admission to college, which are described in Part I of this manual, can be characterized as "discretionary disqualifications." However, defense counsel should not view the ABA standards as alleviating their responsibility to counsel clients on the barriers to college admission that are erected by criminal justice involvement. This is true for several reasons. First, the barriers to college admission are real and significant, as discussed in CCA's report, *The Use of Criminal History Records in College Admissions Reconsidered.* From the perspective of a person with a conviction history who is seeking admission to college, the reality of this sanction is not diminished merely because it is not codified. Second, other professional standards, some of which are set forth below, do not make this distinction. Finally, for good reason, the ABA's distinction has been criticized by practitioners who regularly work with people who have a past conviction history. As one practitioner stated: "[M]any of the most dangerous hidden punishments qualify only as 'discretionary disqualifications' under the current definition. Most immigration, public housing, and employment decisions require the intervening decision of an independent court, agency, or official." [15]

[14] Margaret Colgate Love, *Starting Over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URBAN L. J. 1705, 1727 (2003).

[15] McGregor Smyth, *Holistic is Not a Bad Word: A Criminal Defense Attorney's Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 UNIVERSITY OF TOLEDO L. R. (2005) 479, 493.

National Legal Aid and Defenders Association

In 1995, the National Legal Aid and Defenders Association (NLADA) adopted *Performance Guidelines for Criminal Defense Representation*. Several sections of the NLADA Guidelines instruct defense counsel of their responsibilities with regard to the life-long consequences of criminal justice involvement, including the following:

Guideline 6.2. The Contents of Plea Negotiations
(a) In order to develop an overall negotiations plan, counsel should be fully aware of, and make sure the client is fully aware of: ...
(3) other consequences of conviction, such as deportation, and civil disabilities...

Guideline 6.4. Entry of the Plea before the Court
(a) Prior to the entry of the plea counsel should:
(2) make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions *and other* consequences the accused will be exposed to by entering a plea. (Emphasis added).

Guideline 8.2. Sentencing Options, Consequences and Procedures
(b) Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

(8) deportation;
(9) use of the conviction for sentence enhancement in future proceedings;
(10) loss of civil rights;
(11) impact of a fine or restitution and any resulting civil liability;
(12) restrictions on or loss of license.

New York State Bar Association

In 2010, the New York State Bar Association (NYSBA) issued its Revised Standards for Mandated Representation, designed to ensure the delivery of high quality criminal defense services. The following Standards discuss counsel's duties relevant to the so-called "collateral" consequences of a criminal conviction:

Standard I-7: Criminal Matters
No attorney shall accept a criminal case unless that attorney can provide, and is confident that he or she can provide, zealous, effective and high quality representation. Such representation at the trial court stage means, at a minimum:
a. Obtaining all available information concerning the client's background and circumstances for purposes of ... (v) avoiding, if at all possible, collateral consequences including but not limited to deportation or eviction...

e. Providing the client with full information concerning such matters as ... (v) immigration, motor vehicle licensing, and other collateral consequences under all eventualities...

NEW YORK STATE DEFENDERS ASSOCIATION

In 2004, the New York State Defenders Association adopted "Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State." Standard VIII, A, Duties of Criminal Defense Counsel, includes the following as number 7:

> Counsel should ordinarily meet with the client before entering into plea negotiations, and should explore the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to trial.... **Counsel should be fully aware of and make sure the client is fully aware of, all direct and potential collateral consequences of a conviction by plea.** Counsel should develop a negotiation strategy based on knowledge of the facts and law of the particular case, the practices and policies of the particular jurisdiction, and the wishes of the client....

This standard puts squarely upon defense counsel the duty of identifying and discussing with the client what the life-long consequences of a conviction may be. The NYSDA standard does not distinguish between "collateral sanctions" and "discretionary disqualifications," but instead requires defense counsel to learn of all "direct *and potential* collateral consequences."

The Duty to Counsel

Taken as a whole, these professional standards and guidelines clearly lay out the duty of defense counsel to fully inform clients about the enmeshed penalties of a criminal conviction. *See Padilla v. Kentucky*, 599 U.S. ___, 130 S.Ct. 1473, 1482 (2010) (citing these and other sources in holding that the Sixth Amendment right to the effective assistance of counsel mandates that non-citizen defendants be provided advice, prior to pleading guilty, on the immigration consequences of a conviction).

In the context of barriers to higher education, what does this duty to counsel mean? This question is discussed more fully in the next section of this Guide entitled, *Practice Tips: Providing Advice and Representation.*

Part IV
PRACTICE TIPS:
PROVIDING ADVICE AND REPRESENTATION

Advising clients about barriers to higher education caused by a criminal history record has taken on new importance in light of the expanding use of criminal history screening in college admissions discussed in Part I.

There is a second phenomenon that heightens the need for attorneys to provide representation and advice with this particular barrier in mind – mass criminalization. A criminal history record is now commonplace. As of December 31, 2008, over 92 million adults in the U.S. have a criminal history record (for a misdemeanor or felony arrest or conviction) on file with one of the state criminal history central repositories.[16] A study published in 2012 shows that nearly one-third of American adults have been arrested for illegal or delinquent offenses, excluding minor traffic offenses, by age 23.[17] One of the authors of this study, Robert Brame, told USA Today that, "Arrest is a pretty common experience."[18]

Since there are currently more than 20 million[19] college students enrolled at institutions that confer degrees, undoubtedly, in the course of your practice you will encounter a situation in which you will need to provide guidance and advocacy for a client regarding this issue.

In this part we will address this issue in two different contexts. First, we will discuss advice and representation that should be provided while the criminal case is pending, for both the currently enrolled college student and for the aspiring student who intends to apply to college. Second, we will discuss advice that an attorney should provide after the disposition of the criminal case with regard to the college application process.

Advice and Representation While the Case is Pending

Your representation in most criminal cases should include interviewing and advising your client as to the following:

[16] Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2008*, CRIMINAL JUSTICE INFORMATION POLICY REPORT, Washington, D.C., October 2009.
[17] Robert Brame, Michael G. Turner, Raymond Paternoster, and Shawn D. Bushway, *"Cumulative Prevalence of Arrest From Age 8 to 23 in a National Sample,"* PEDIATRICS, (January 2012): 21-27.
[18] Donna Leinwood, "Study: Nearly One in Three Will Be Arrested by Age 23," *USA Today*, Dec. 19, 2011.
[19] National Center for Educational Statistics, Digest of Educational Statistics (enrollment fall 2009), Table 196.

1. *Determine if your client is currently enrolled in college. If so,*

   Determine if your client is currently receiving financial aid; if so, advise your client as to the consequences of a conviction for a drug offense.[20]

   i) Determine what the college policy is with regard to arrests and convictions while enrolled as a student to decide if your client has an affirmative duty to disclose the arrest or conviction to college officials, and if so, what the implications of this disclosure will be as well as the implications of failing to disclose.

   ii) Determine if your client will be subject to a college administrative hearing and what the procedures will be and advise accordingly.

   iii) Explain the consequences of a criminal conviction with regard to applying to graduate school and/or pursuing a career that requires occupational licensing. Many careers, not just professional ones, require some kind of licensing. A helpful resource for attorneys whose clients live and work in New York is the Legal Action Center's "New York Occupational Licensing Survey." [21]

2. *If your client is not currently enrolled in college, determine if your client aspires to continue his or her education to the post-secondary level. If so,*

   i) Explain how a criminal conviction may cause barriers to admission to institutions of higher education and how criminal history records are used to screen students in the admissions process at a majority of colleges and universities.

   ii) Talk to your client to help him or her prioritize what consequences of the criminal conviction he or she wants to address.

   iii) Explain to your client the possible and realistic dispositions of the case and how each may ameliorate the consequences in terms of his or her higher education goals.
   - Youthful Offender Adjudication
   - Adjournment in Contemplation of Dismissal
   - Dismissal
   - Plea to a violation
   - Plea down from felony to misdemeanor
   - Sealing Statutes (CPL 160.50 and CPL 160.55)

   iv) Discuss with you client and provide advice about the best and realistically achievable disposition.

[20] See Part II of this Guide.
[21] This survey is available on-line at: http://lac.org/doc_library/lac/publications/Occupational%20Licensing%20Survey%202006.pdf.

v) Explain to your client what can be done to ameliorate the disposition, including, for example, applying for the following:
   - Certificate of Relief from Disabilities or Certificate of Good Conduct pursuant to Correction Law § 700, et seq.
   - Conditional Sealing (CPL § 160.58)

vi) Carefully describe and clarify the nature of the disposition of the case so that the client can later explain the disposition on an application or during an interview. It is best to follow up this conversation with a letter so your explanation is memorialized in writing for your client to review at a later date in time.

3. Whether or not your client is in college at the time of arrest, explain how he or she can obtain a copy of his or her official criminal history record and recommend that this be done. This will provide your client an opportunity to check to make sure that the disposition was properly recorded and that the record properly reflects any sealing, conditional sealing, or YO adjudication from which your client should have benefited.[22] Impress upon your client the importance of doing this. Explain that if the answer he or she gives to a criminal history question does not correspond to the background check that the college receives, the college may use this as a basis to deny admission. CCA's study found that college admissions officers are likely to assume that a student has falsified an application even when it is an honest misunderstanding or when the background check is erroneous and contains information at odds with the applicant's disclosure.[23]

4. Develop and employ the negotiation strategies discussed in Part VI of this guide.

[22] Instructions on obtaining a personal DCJS record are available at: http://www.criminaljustice.ny.gov/ojis/recordreview.htm. Instructions on obtaining a personal FBI criminal history record are available at: http://www.fbi.gov/about-us/cjis/background-checks/submitting-an-identification-record-request-to-the-fbi.

[23] *The Use of Criminal History Records in College Admissions Reconsidered* at p. 19. Thirty-two percent of schools that consider criminal history information reported that they automatically deny admission to applicants who fail to disclose their criminal record and 46 percent stated that they might deny admission. Most of the comments offered in conjunction with this question on the CCA survey suggest that failure to disclose a criminal record is considered to be a deliberate act of lying or falsification.

Post-Disposition Advice About the College Admissions Process

After the disposition of the case you close your file. However, for your clients, the enmeshed consequences that flow from the case never allow them to close their files. Long after a case is over, a former client may return to your office with questions about a college application, or a new client may consult with you about her desire to apply to college but concerned that her criminal history may stand in the way. Below are some issues that you may want to explore with your client should you find yourself in this situation.

1. Help your clients obtain their criminal history record from the Division of Criminal Justice Services (DCJS) and the FBI.[24] This will allow you and your clients to know exactly what their criminal history is.

   - Do not rely on your clients' recollection of the disposition. Most people are confused about what their record is and as a result, do not accurately report it. Explain to your clients why accuracy is important and as noted above, make them aware that any inaccuracy in their reporting of a disposition may cause the admissions officer to assume that they are intentionally falsifying information if it is different than what appears on a background check.

2. Carefully review the criminal history record with your clients. Review each cycle shown to identify:

   - errors, oversights, mistaken entries, etc.
   - pending arrests and/or incomplete entries.

3. Correct errors that you find in the DCJS record and resolve incomplete cycles. These corrections may include:

   - Incorrect dispositions
   - Failure to indicate that an arrest resulted in a Y.O. adjudication
   - Failure to enter sealing order

[24] *See* note 21, *supra*.

4. For each cycle/disposition, explain to your clients what the disposition actually was and the legal significance. Here is some common terminology that needs to be explained:

- Was there a conviction for a felony, misdemeanor, or violation?
- Is the disposition reportable as a criminal conviction?
- What does an "A.C.D." mean? What does a "C.D." mean?
- What does a Y.O. adjudication mean?
- What does it mean if your client's case was handled in Family Court as a J.D.?
- What if your client's case was handled in adult court as a J.O.?
- What does a sealing under CPL § 160.50 or § 160.55 mean?
- What about a conviction that has been conditionally sealed under CPL § 160.58?

5. Explain to your clients how each disposition legally entitles them to respond to questions that may be included in any application. *For example:*

- Have you ever been convicted of a crime?
- Have you ever been convicted of an offense?
- Have you been convicted of a felony?
- Have you ever been convicted of a misdemeanor, felony or other crime?
- Have you ever been arrested?

6. Explain to your clients that different colleges have different policies. About one-third of all colleges do not consider criminal records, however, a majority of colleges do. Some colleges rely entirely on self-disclosure while others do their own background checks or pay a private company to do so. Still others utilize self-disclosure, and for positive responses, engage in a more far-reaching backgrounding and disclosure process. CCA's report, *The Use of Criminal History Records in College Admissions Reconsidered,* is helpful to familiarize yourself with many of the different policies.

7. Explain to your clients that while some colleges use the criminal justice information to exclude all or some people with certain types of convictions, other colleges do not engage in automatic exclusions, instead using a more balanced and thoughtful approach. For example:

- SUNY relies on the multi-factor analysis of Article 23-A of New York's Correction Law.
- For clients interested in a SUNY school, review Article 23-A with them.

8. Review an application, or several different applications with your client, with an eye towards the particular criminal history question contained in each.

- Point out the differences in how the SUNY application, the Common Application, and the CUNY application treat the criminal history question.

9. With these three types of applications in mind, you should point out that different applications ask the criminal history question in significantly different ways and that some do not ask at all.

10. Help your client choose which application to use. Some colleges use an application form that is unique to their own college or campus. Other colleges that are part of a state or city-wide system accept either the system-wide applicant (i.e. SUNY ASC) or their own unique form. These same schools may also be members of the Common Application and will accept that application form as well. Since each of these application forms may ask a significantly different version of the criminal history question, it is in your client's best interest to wisely choose which application to use.

- Compare the SUNY application criminal history question with how that question is worded in the Common Application.
- Note how an applicant with a misdemeanor conviction would not have to disclose that conviction when responding to the SUNY application but would have to disclose when responding to the Common Application question.

11. Different application forms provide different instructions regarding responses to the criminal history question. Some provide no instructions at all. Note that the instructions may differ significantly, particularly regarding what dispositions need not be reported (exclusions).

- Compare the exclusions in the SUNY application and in the Common Application. (See Part I).
- A review of these instructions and exclusions will help you guide your client as to which application to use when there is a choice of using two different applications for the same college. (i.e. Some SUNY schools accept either the SUNY ASC application or the Common Application).

12. Some colleges are much more transparent and forthright in the process they use when screening from criminal history records, while others are far less transparent about their process. When possible, review with your client the policies of the schools in which he or she has expressed an interest.

13. Review with your client whether his conviction for a drug offense (felony, misdemeanor, or even a violation) occurred while he was receiving federal student aid. If so, explain the automatic suspension period that is applicable and if the suspension period is still in effect, explain what your client can do to become eligible for federal student assistance by proving "rehabilitation." (See Part II of this Guide).

14. Prepare and encourage your client to proactively submit proof of rehabilitation, transformation, changes in goals and attitudes, insights into prior criminal behavior, and reasons he or she is pursuing higher education. This may be part of a personal statement he or she submits with the application.

15. Warn your client about the danger of providing too much information. Some schools do not ask for self-disclosure of criminal history information on the application. However, if an applicant supplies such information in a personal statement or essay, that information may trigger further inquiry from the admissions office that would not have been made had the information not been volunteered. For some of your clients this may be a difficult choice. Understandably the applicant may be very proud of the accomplishment and transformation in his or her life during and/or post-incarceration and want to share it. This should be done with great caution and careful forethought.

16. Encourage your client to request a personal interview when possible. Prepare your client for this interview.

- How to address criminal history
- How to discuss rehabilitation, transformation, motivation, and lessons learned

17. Explain to your client what he or she can do to mitigate his or her criminal history.

- Certificate of Relief from Disabilities or Certificate of Good Conduct
- Conditional sealing

18. A difficult question arises if your client applies to a college that asks applicants to provide the admissions office with a personally-obtained DCJS criminal history record. For most SUNY colleges, this is now standard practice once an applicant discloses a felony conviction on the application as discussed in Part I. A review of the client's DCJS record will allow you to point out that there may be information shown on the record that would otherwise be sealed from public view or is confidential. Disclosure does not mean automatic denial of admission, but your client should be forewarned. Your client may wish to proceed or may decide to save the time and effort and apply to a school where the talent, diversity, perspective, and other contributions to campus life that he or she has to offer will be appreciated.

Part V
HOW TO ADVISE A CLIENT ABOUT ANSWERING THE CRIMINAL HISTORY QUESTION ON A COLLEGE APPLICATION

Practice Advisory

Advising a client about how to respond to the criminal history question on a college application – which has various versions depending on the application - is indeed challenging. It requires both a mastery of New York's sealing and confidentiality laws that are intended and carefully designed to prevent discrimination and avoid the stigma that attaches from an arrest or conviction. It requires a deep understanding of how criminal justice information can contain errors, be misconstrued, and be easily accessed. It also requires giving careful guidance when simple legal answers do not suffice. As noted at the end of Part I, it requires a balancing of the "black and white" legally defensible answer with the more nuanced concern that an admissions officer will not understand the legal justification for a negative response to the criminal history question and will instead assume that there has been an intentional misrepresentation if he or she becomes aware of some seemingly contrary criminal history information. This may result in a denial of admission (or, after admission, a dismissal) without providing the applicant with an opportunity to explain.

In some instances, the application questions that call for the disclosure of information that has been sealed or deemed confidential results from admissions officers' lack of expertise about criminal justice issues. In many other instances, however, college admissions officials have intentionally designed questions that require the disclosure of sealed and confidential information. Such questions are not merely improper and possibly illegal, they also thwart public policy designed to protect against the disclosure of certain information as a means of preventing needless discrimination, promoting a person's successful reintegration into the community, and ultimately enhancing public safety. It is ironic that in their efforts to keep their college campuses safe, some gatekeepers of higher education flagrantly violate public policy and evade legal restrictions. Not only do these improper questions create a dilemma for the applicant, they send a message that in the name of campus safety, many admissions officers have come to engage in questionable practices.

Though improper and possibly illegal, many colleges persist in this problematic practice. When advising their clients, thoughtful lawyers balance the practical reality that colleges often act adversely against applicants who do not disclose the requested information against the legally

authorized responses that college applicants may provide. As you guide your client through the criminal history question(s) on the application you must ensure that your explanation of each of the legally defensible answers suggested below, or the many others that we have not anticipated, are accompanied by a counseling session that reviews the pros and cons of the responses and the possible repercussions caused if the college later learns of the information that the applicant elected - lawfully – to keep confidential. Do not simply provide the answer suggested below. Your most valuable advice is that which is practical.

Never assume that any particular answer is safe and that information will not arise at a later date to contradict the answer provided on the application. Information about your client's criminal history may be revealed in any number of ways. More and more colleges are using internet searches, Facebook searches and the like to search for background information. Some colleges use private background checks. Others require background checks for participation in subsequent internship programs. Disgruntled fellow students have been known to contact the admissions office upon learning of a fellow student's past arrest. For those students who may have multiple criminal justice entries, disclosure of one, perhaps a valid conviction, may lead to disclosure of another that would otherwise be kept confidential.

Legally Authorized Answers to Common College Application Questions

Below are legally authorized answers to questions that commonly appear on college applications with a brief justification for the answer.

1. If your client was adjudicated a Youthful Offender

Question: Have you been convicted of a crime?

Answer: No.

The answer "no" to this question is based upon the Youthful Offender statute itself, CPL § 720.35. The statute provides that:

> *1. A youthful offender adjudication is not a judgment of conviction for a crime or any other offense...*
> 2. Except where specifically required or permitted by statute or upon *specific* authorization of the court, all official records and papers whether on file with the *court, a police agency or the division of criminal justice services, relating to a case* involving a youth who has been adjudicated a youthful offender, are *confidential...*

Question: Have you been adjudicated guilty of a crime?

Answer: No.

Although the question asks about an adjudication of guilty of a crime rather than about a conviction the answer remains "no." This is how the question is posed on the Common Application. There are at least two reasons why the answer to this question would be "no," if responding to the common application. First, a Youthful Offender adjudication is comprised of a Youthful Offender finding and a Youthful Offender sentence. [CPL § 720.10 (6)]. It is not an adjudication that one is guilty of a crime. Second, the Common Application excludes from this question any adjudication that has been ordered by a court to be kept confidential. Upon the judge adjudicating a youth a Youthful Offender, CPL § 720.35 (2) specifically provides that all official records are confidential. It would appear that the adjudication and statute would place a Youthful Offender adjudication within the Common Application's confidentiality exclusion.

Question: Have you been arrested for a crime?

Answer: Yes, although the more legally correct - albeit less practical - response is to refuse to answer this question based upon the confidentiality bestowed by the Youth Offender statute.

This is a good example of a question that is improper to ask on an application. The law in New York is quite clear that the confidentiality conferred by CPL § 720.35 (2) attaches not only to the physical documents constituting the official record of the adjudication of a Youthful Offender but also to the information contained in those documents, including the arrest and the charges. *Barnett v. David M.W.*, 22 A.D.3d 575 (2nd Dept. 2005). As the court in *Barnett* held, a person adjudicated a Youthful Offender can refuse on grounds of confidentiality to answer questions about charges filed against him or her. To require disclosure of charges or an arrest by a person adjudicated a Youth Offender would undermine the statutory grant of confidentiality. *State Farm Fire and Casualty Co. v. Bongiorno*, 237 A.D.2d 31 (2nd Dept. 1997). College admissions officers – or at least their legal counsel - should know this. Yet they continue to ask the question knowing that practically, applicants cannot refuse to respond based upon confidentiality. This question on a college application flies in the face of the public policy of which "the confidentiality of information is part of the comprehensive legislative plan to relieve youth offenders of the consequences of a criminal conviction and give them a 'second chance.'" *Id.* at 36.

This question also helps to illustrate another strategy you may wish to employ. Although a particular college's application may ask about arrests and create the quandary about how to reply for your client who was adjudicated as a Youth Offender, you may want to determine whether that very same college accepts the Common Application, which does not ask about arrests but only convictions.

II. If your client was granted an Adjournment in Contemplation of Dismissal and the case was subsequently dismissed

Question: Have you been convicted of a crime?

Answer: No.

The answer "no" is based upon the ACD statute itself, which provides that an ACD "shall not be deemed a conviction or an admission of guilt." [CPL § 170.55 (8)].

Question: Have you been arrested for a crime?

Answer: No.

The answer "no" in this context requires some statutory analysis coupled with case law:

- Both ACD statutes, CPL §§ 170.55 (8) and 170.56 (4) provide that upon the dismissal of the accusatory instrument "the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution."
- Since an ACD dismissal meets the definition in CPL § 160.50 (3) of a "termination of a criminal action in favor of the accused" it gets the benefit of the provisions of CPL § 160.60, which provides both that "the arrest and prosecution shall be deemed a nullity" and that "no such person shall be required to divulge information pertaining to the arrest or prosecution." This key terminology ties into the holding in two cases below, *Kushner v. De La Rosa* and *People v. Ellis*.
- In *Kushner v. De La Rosa*, 72 Misc.2d 319 (Sup. Ct. Queens Co. 1972) the court focused on the language in the ACD statute – "the arrest...shall be deemed a nullity..." to conclude that a person who is conferred the benefit of such statutory language is entitled to legally deny a question about the arrest.
- The court in *People v. Ellis*, 184 A.D.2d 307 (1st Dept. 1992) also concluded that a person could deny an arrest when the criminal action was terminated in favor of the accused, however the *Ellis* court focused on different language. Relying upon the language of CPL § 160.60 that provides that "no such person shall be required to divulge information pertaining to the arrest or prosecution," the court concluded that a person could "deny the existence of prior arrests" that resulted in dismissal of charges and were sealed. The negative answer to the arrest question condoned by the holding in *Ellis* was recently approved in *Padilla v. Bailey*, 2012 WL 4473958 (SDNY 2012).

III. If your client's case was dismissed and sealed pursuant to CPL § 160.50

Question: Have you been convicted of a crime?

Answer: No.

Because the charge has been dismissed there has been no conviction.

Question: Have you been arrested for a crime?

Answer: No.

The legally proper answer is "no" because the sealing pursuant to CPL § 160.50 receives the protection of CPL § 160.60. The language in CPL § 160.60 and the applicable case law – *Ellis* and *De La Rosa* – for the reasons discussed above in the ACD section authorize a person to legally deny the arrest question.

As noted above, knowing the legal answer is only half of the equation in giving sound advice to your client. What if this arrest surfaces later? What if the college requires a DCJS criminal history record for another conviction, and this arrest is revealed? It is important to know the law and the protection it provides, but to also consider the practical implications of denying the arrest.

IV. If your client was convicted of a violation with or without CPL § 160.55 sealing

Question: Have you been convicted of a crime?

Answer: No.

The answer is "no" based upon the definition of "crime" found in Penal Law § 10.00 (6) which is defined as "a misdemeanor or a felony." A conviction for a violation is neither and is therefore not a crime.

Question: Have you been convicted of an offense?

Answer: Yes.

The answer is "yes" because under the Penal Law, a violation is defined as an offense. The answer is "yes" even if the violation was sealed pursuant to CPL § 160.55. This is because a CPL § 160.55 sealing does not benefit from CPL § 160.60, and thus there is nothing defining a CPL § 160.55 sealing as a "legal nullity" which one shall not "be required to disclose." Moreover, though Human Rights Law § 296(16) states that *employment* applicants shall not be required to divulge arrests that resulted in CPL § a 160.55 sealing, this protection does not explicitly extend to the domain of higher education.

Question: Have you been arrested for a crime?

Answer: No - if the arrest charges included only violation charges, since a violation is not a crime.
Yes - if the arrest charges included at least one misdemeanor or felony offense, which are criminal offenses.

Question: Have you been arrested for any offense?

Answer: Yes.

For the same reasons discussed above about the question regarding a conviction for an offense, there appears to be no protection from such a question.

V. If your client was convicted of a crime but the conviction was conditionally sealed pursuant to CPL § 160.58

Question: Have you been convicted of a crime?

Answer: Yes.

CPL § 160.58 sealing does not benefit from CPL § 160.60 and its "legal nullity" language. Additionally, while Human Rights Law § 296(16) prohibits employers from asking job applicants to disclose conditionally sealed convictions, this statute does not explicitly extend to the higher education domain. Thus, there appears to be no protection from such a question.

Exception: If the instructions to the criminal history question in the application provide for an exclusion for sealed records then the answer to this question should be "no."

Question: Have you been arrested for a crime?

Answer: Yes.

For the same reasons stated above, there appears to be no protection from such a question.

VI. If your client was convicted as a Juvenile Offender

Question: Have you been convicted of a crime or a felony?

Answer: Yes to either question.

Since a Juvenile Offender is treated as criminally responsible as an adult and because the juvenile is considered to have an adult criminal record, the answer is "yes."

Exceptions:

i) If your client was adjudicated a Youthful Offender after the Juvenile Offender conviction then the answer to this question would be "no" because there has been no conviction for a crime as explained in the above section on YO. [CPL § 720.35 (1)].

ii) Note should be taken for a client who is applying to a SUNY college. In 2012 SUNY issued a draft FAQ that instructed that "if an applicant was convicted of a felony as a Youthful Offender, Juvenile Delinquent, or Juvenile Offender, or has otherwise had their records sealed..." the applicant "should answer 'no'" to the criminal history question on the application.

Question: Have you been arrested for a crime?

Answer: Yes.

There is no apparent protection from this question even if the Juvenile Offender was adjudicated a Youthful Offender. See note to YO question above.

VI. If your client was adjudicated a Juvenile Delinquent in Family Court

Question: Have you been convicted of a crime?

Answer: No.

The answer to this question is "no" based upon the provision in the Family Court Act § 385.1 (1) that a Juvenile Delinquency adjudication shall not be denominated a conviction and no such person so adjudicated shall be denominated a criminal.

Question: Have you been adjudicated guilty of a crime?

Answer: No.

Although the question asks about adjudication rather than conviction, the answer remains "no." Section 380.1 (1) of the Family Court Act provides that no adjudication as a JD shall be denominated a conviction nor shall such juvenile "be denominated a criminal." That provides some basis for a negative answer. In addition, Family Court Act § 380.1 (3) provides that "no person shall be required to divulge information pertaining to the arrest...or any subsequent proceedings" regarding a juvenile delinquency proceeding. That non-disclosure language is the same as the language focused upon by the court in *People v. Ellis,* 184 A.D.2d 307 (1st Dept. 1992) to authorize a negative response to an inquiry about an arrest. Counsel should also review the Family Court records with the client. You may find that the records were expunged (Family Court Act § 375.3), sealed (Family Court Act § 375.1, or destroyed (Family Court Act § 354.1). Once you have determined the status of the juvenile delinquency records you may find

that the instruction to the criminal history question provides exclusions for adjudications that have been expunged, sealed or destroyed, as is the case for the Common Application.

Question: Have you been arrested for a crime?

Answer: No.

For some of the same reasons addressed above regarding the question about whether the applicant was adjudicated guilty of a crime, the appropriate answer is "no." Reliance upon the statutory language that prohibits requiring any person "to divulge information pertaining to the arrest" regarding a juvenile delinquency proceeding when read in conjunction with the *Ellis* case provides sound basis for a negative response to this question.

Part VI
USING THE EXISTENCE OF THE ENMESHED CONSEQUENCES AS LEVERAGE FOR BETTER ADVOCACY AND OUTCOMES

In a 2009 landmark decision, the United States Supreme Court held that criminal defense attorneys have the affirmative duty to accurately inform their non-citizen clients of the immigration consequences of a guilty plea, particularly deportation. *See Padilla v. Kentucky*, 599 U.S. ___, 130 S.Ct. 1473 (2010). While the *Padilla* decision deals most directly with the advice that defense counsel must provide to their non-citizen clients, the decision also encourages defense counsel to use the *existence* of the so-called "collateral consequences" of a conviction to leverage better outcomes.

The *Padilla* underpinnings for this strategy, and approaches to best effectuate it, are outlined in The Bronx Defenders publication, "Defender Toolkit & *Padilla* Compliance Guide: Using Knowledge of 'Enmeshed Penalties' (or Collateral Consequences) to Get Better Results in the Criminal Case." ("*Padilla* Compliance Guide"). This publication is available at: http://www.reentry.net/ny/library/item.135140.

McGregor Smyth has also written the following two companion articles that discuss in more detail how to use the existence of "collateral consequences" to leverage better dispositions:

> *"From 'Collateral' to 'Integral': The Seismic Evolution of Padilla v. Kentucky and Its Impact on Penalties Beyond Deportation"* HOWARD LAW REVIEW, Vol. 54, No. 3, 795 (2011), available at: www.reentry.net/ny/library/folder.128172-Manuals_and_Overviews_of_Reentry_and_Collateral_Consequences.
>
> "'Collateral' No More – The Practical Imperative for Holistic Defense in Post-Padilla World... Or, How to Get Consistently Better Results for Clients," in publication, will be available at: www.reentry.net/ny/library/folder.128172-Manuals_and_Overviews_of_Reentry_and_Collateral_Consequences

Many of the concepts discussed below are taken from the Bronx Defender's "*Padilla* Compliance Guide" and McGregor Smyth's articles. The information in this part is not intended to supplant the "*Padilla* Compliance Guide" or articles, but instead to pique the interest of defense attorneys and encourage them to read further.

Padilla Revisited: A Framework for Better Advocacy

For years, advocates have recognized the ever-increasing punishments associated with criminal justice involvement and described its broader impact on lawyering:

> *From the moment of arrest, people are in danger of losing hard-earned jobs, stable housing, basic public benefits, and even their right to live in this country. The steady increase in the scope and severity of the penalties that result from* arrests has combined with the nearly universal availability of criminal history *data to alter drastically the impact of criminal charges on clients – and the practice* for lawyers.[25]

In *Padilla*, the United States Supreme Court recognized that these so called "collateral consequences" can result in life-long punishment, and that it is no longer constitutionally permissible for defense lawyers to ignore this reality in representing their clients. The Court urged lawyers to defend their clients in a manner that takes into account and, where possible, ameliorates the life-long consequences of criminal justice involvement. The Court did so in two significant ways:

> • **First, the *Padilla* Court summarily rejected the oft-relied upon legal fiction that there is a distinction between "direct" and "collateral" consequences of a criminal conviction.** For years, courts throughout the country had held that defendants did not receive ineffective assistance of counsel when their lawyers failed to advise them of the life-long consequences of their conviction. Courts did so by adopting the legal fiction that these punishments are not the "direct" result of the conviction, but are instead merely "collateral." The *Padilla* Court soundly rejected this legal fiction, stating: "We have never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under *Strickland*." *Padilla*, 130 S.Ct. at 1481. While it is true that deportation is "civil" in nature and not pronounced in criminal court as part of the sentence to be imposed, deportation is nonetheless "*intimately related to the criminal* process," *Id.* at 11481. Moreover, deportation can be just as punitive, if not more so, than the criminal penalty that is pronounced at sentencing.
>
> Of course, deportation is not the only civil consequence that is "intimately related" to the criminal process. Our "tough on crime" and "zero tolerance"

[25] The Bronx Defenders. "*Padilla* Compliance Guide."

policies of the last three decades have resulted in an ever-increasing number of civil consequences that are "intimately related" consequences, including loss of employment, disenfranchisement, loss of public housing, loss of student loan eligibility, and barriers to college admission. In *Padilla*, Justice Alito's concurring opinion recognized deportation is not the only significant penalty that flows from a conviction. *Padilla*, 599 U.S. at 1488.

• **Second, the *Padilla* Court explicitly encouraged attorneys to use the existence of these enmeshed consequences to negotiate for better outcomes.** The decision in *Padilla* is not merely about the advice that criminal defense attorneys must provide their clients about possible enmeshed penalties. It is also a decision about opportunity – that is, the opportunity for defense lawyers to be more effective advocates if they use the existence of enmeshed penalties as a means of gaining more leverage in plea negotiations, and thus obtaining better results for their clients. The Court could not have been more clear on this point, stating as follows:

> Informed consideration of deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. By bringing deportation consequences into this process, the defense and the prosecution may well be able to reach agreements that better satisfy the interests of both parties... Counsel who possess the most rudimentary understanding of the deportation consequences of a particular criminal offense may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduces the likelihood of deportation, as by avoiding a conviction for an offense that automatically triggers the removal consequence.[26]

Knowing your client and the possible life-long consequences he or she may face as a result of a criminal conviction is not only a constitutional mandate, it is an opportunity for better, client-centered advocacy.

Concrete Steps for Better Advocacy

In his article "*'Collateral' No More – The Practical Imperative for Holistic Defense in a Post-Padilla World...Or, How to Get Consistently Better Results for Clients*," McGregor Smyth discusses The Bronx Defenders' fifteen years of experience using the existence of enmeshed consequences for better outcomes. In light of this experience, he states:

[26] *Padilla*, 599 U.S. at 1486.

> Experience has taught that defenders can obtain more favorable bail, plea, and sentencing results – and even outright dismissal – when they are able to educate prosecutors and judges on *specific* and severe consequences for their clients and their families. When raising these consequences with prosecutors and judges, keep in mind that they typically respond best to consequences that offend their basic sense of fairness – those that are absurd, disproportionate, or harm innocent family members.[27]

The inability to access higher education is a specific and severe consequence that may result from a conviction and that impacts defendants and their family members.

McGregor Smyth outlines several strategies for responding to the *Padilla* Court's insistence that we no longer close our eyes to the true reality of the punishment associated with criminal justice involvement, and for that reason, his article is a must-read for all defense attorneys. In the context of access to higher education, these strategies can be summarized as follows:

• Get to know your client and the circumstances of his or her life. There is much more to our clients than the crimes they have been charged with, and competent defense lawyers must embrace the responsibility to learn more about their clients' lives than the alleged crime. "Focusing narrowly on the "facts" of the criminal allegations can have counter-productive results and miss critical opportunities for better outcomes."[28] In the context of higher education, counsel must find out if the client is currently in college or, if not, is college-bound. Counsel must also discover whether or not the client is currently receiving financial aid to pay for college.

• *Identify the enmeshed penalty or penalties specific to your client.* It is critical to identify the specific consequence or consequences that will result in unfair and disproportionate punishment for your client. As Smyth advises: "Focus on the measured risk of *identifiable* penalties for *specific* clients.... For the purposes of targeted advocacy and negotiation, the penalty must be serious, likely for that client, and something the prosecutor or judge has the power to change."[29] In the context of higher education, the very real consequences not only involve loss of student loan eligibility, but also significant barriers to admission. For the former, counsel need only cite the statute (found in Part II of this Guide); for the latter, CCA's report, "*The Use of Criminal History Records in College Admissions Reconsidered*," can be an effective means of conveying the likelihood that a conviction, particularly a felony conviction, will erect barriers to admission to college.

• *Identify the disposition that is realistic and has the best possibility of ameliorating the enmeshed penalty.* While it would be wonderful for every case to result in a dismissal or a sealable disposition, such an outcome simply is not possible in every situation. You must

[27] McGregor Smyth, "*'Collateral' No More*," at 151 (emphasis in the original).
[28] Id. at 156.
[29] Id. at 160.

identify what is realistic in light of the charges your client faces, his or her prior history and personal circumstances, and local practice. "Advocacy is local and personal. It depends on the law and practice of the courthouse, the community and jury pool, and the circumstances of the person charged with the crime and their family. It also depends on the goals, priorities, and preconceptions of the individual prosecutor and judge. In the context of your own local practice, you will develop a menu of proven strategies based on your knowledge of the law and your clients."[30]

• *Humanize your client by telling his or her story.* Telling your client's story is perhaps the most effective means of transforming him or her from "criminal" to "person" in the eyes of the judge and prosecutor. It is also a means by which to instill in the prosecutor the fact that his or her decision can make a difference in the client's life. "Since they enjoy nearly unfettered discretion, prosecutors must acknowledge that the decision to impose, mitigate, or avoid many of these penalties on people charged with crimes and their families lies in their power."[31]

• Educate the prosecutor and/or judge about the enmeshed consequence and the impact it will *have on your client's life.* Be direct, and talk about what loss of the ability to attend college will mean for your client and his or her family members. Remind the judge and/or prosecutor that the imposition of this penalty will result in unfair, disproportionate punishment.

• Use the enmeshed consequences to argue for the outcome you want. "Work towards a shared understanding of both proportionality of penalty and rehabilitative goals in light of the client's story, which can form a productive ground for negotiation at every stage in individual cases, from bail applications to pleas to sentencing."[32] Where appropriate, discuss the disproportionate impact, reminding the prosecution and the judge that you are not seeking "preferred treatment" for your client, but instead insisting that your client not be over-punished. There is no question that loss of the ability to attend college is a significant punishment with life-long implications.

• Remind the prosecutor and/or the judge of *the duty to impose a disposition that best promotes the convicted person's "successful and productive reentry and reintegration into society."* Penal Law § 1.05(6). In this sense, the inability to attend college is not only disproportionate punishment, it is also counter-productive. CCA's report, *"The Use of Criminal History Records in College Admissions Reconsidered,"* pages 29-30, can provide defense counsel with the research and data needed to convince even the most reluctant prosecutor of the benefits to the community as a whole, including the public safety benefits, of ensuring that people with past criminal justice involvement are able to access higher education.

[30] Id. at 163.
[31] Id. at 162.
[32] Id at 161.

Putting These Concrete Steps into Action: An Illustration

The following example illustrates how knowing about the barriers to higher education that are closely related from criminal justice involvement can result in better advocacy.

Terrence[33]

One warm night last summer, 19 year old Terrence was hanging out with some friends on Buffalo's west side when two police officers approached and asked Terrence and his friends to empty their pockets. Terrence had a marijuana cigarette in his front left pocket, and as a result of pulling it out of his pocket, he was issued an appearance ticket charging him with Penal Law §221.35 (a B Misdemeanor). Two weeks later, Terrence appeared in Buffalo City Court for arraignment. His assigned counsel, Joanne, looked at the appearance ticket and Terrence's rap sheet (he had no previous arrests), and thought that she could likely negotiate a quick disposition to a guilty plea to Unlawful Possession of Marijuana (UPM), a non-criminal offense, in exchange for a fine and no jail time. Before doing so, however, she spent a few minutes talking to Terrence to learn more about him. She discovered that Terrence grew up in Buffalo, graduated from Buffalo City Schools, and was about to enter his sophomore year at State University of New York (SUNY), Geneseo. Terrence had finished his freshman year with a 3.4 grade point average, and smiled proudly when he told Joanne he had made the Dean's list. School was very important to Terrence, as he was the first person in his family to attend college. Joanne asked Terrence how he was paying for college, and he explained that he was paying through a combination of federal work-study grants and student loans.

Joanne's strategy changed: a UPM conviction would mean loss of the federal work-study and student loans for Terrence. She had a quick conference with the prosecutor handling arraignments, discussing Terrence's lack of arrest record, how well he was doing in school, and the disproportionate punishment of losing the ability to complete college. With this information, she convinced the prosecutor to consent to an adjournment in contemplation of dismissal. Terrence was able to return to college at the end of the summer.

What Worked

Joanne followed the steps outlined above, as follows:

- Get to know your client

Before delving into the case with a disposition that she *thought* would be helpful to Terrence, Joanne took a little extra time to talk to Terence and to learn critical information about the context of his life. Learning that he was enrolled in college and dependant upon federal student assistance was critical to the outcome of the case.

[33] This scenario is largely taken from McGregor Smyth's article, "*'Collateral' No More.*"

• *Identify the enmeshed penalty specific to your client*
Joanne quickly identified that a conviction for *any* offense involving marijuana would automatically suspend Terrence's eligibility for federal student loan assistance. (See Part II)

• *Identify the disposition that is realistic and can best ameliorate the enmeshed consequence*
Joanne identified the outcome she wanted: an adjournment in contemplation of dismissal. She determined that this disposition was still a realistic possibility, despite the fact that in her particular court, it was outside the normal disposition offered at arraignments for misdemeanor arrests. If this had not worked, Joanne would have asked instead for a guilty plea to disorderly conduct, a violation level conviction that would not result in loss of federal student aid eligibility.

• *Humanize your client by telling his story*
It was neither time consuming nor difficult for Joanne to humanize Terrence by telling the arraigning assistant district attorney Terrence's story. Joanne explained that he was in college, that he was on the Dean's list, and that he was on target to successfully graduate from college. She further explained that he was a first-generation college student and determined to make his family proud. In telling Terence's story, Joanne transformed the prosecutor's initial impression of Terrence as a "stoner" to that of a goal-oriented young man with potential.

• Educate the prosecutor and/or the judge
Joanne informed the prosecutor that Terrence would automatically lose the ability to pay for college and would have to drop out if he was convicted of any controlled substance offense, even if the conviction was for a non-criminal offense.

• *Use the enmeshed consequence* to argue for the outcome you want
In advocating for an adjournment in contemplation of dismissal, Joanne talked about how the inability to attend college would be disproportionate punishment for Terrence's mistake of possessing a small amount of marijuana; she talked about how this would be needless disappointment for Terrence's family; and she also convincingly argued how unproductive for the community as a whole it would be for Terrence to drop out of college.

• Remind the prosecutor/judge of Penal Law § 1.05(6)
Joanne reminded the prosecutor that imposing a disposition that allowed Terrence to complete college would be most consistent with Penal Law § 1.05(6). Such a disposition would best ensure that, in the future, Terrence would achieve success as law-abiding, productive community-member.

Appendix A
GLOSSARY OF TERMS FOR CRIMINAL HISTORY REPORTING PURPOSES

Adjournment in Contemplation of Dismissal – This disposition of a case is often referred to as an ACD or ACoD and the procedure is found in both CPL § 170.55 and § 170.56. An ACD is an adjournment of the action with a view toward ultimate dismissal of the accusatory instrument in the furtherance of justice. As noted in subdivision (8) of CPL § 170.55 and ACD "shall not be deemed a conviction or an admission of guilt." The purpose is to wipe the slate clean. Upon the dismissal of the accusatory instrument as a result of an ACD "the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and conviction." [CPL § 170.55 (8) and § 170.56 (4)]. An ACD dismissal is considered a termination of a criminal proceeding in favor of the accused as defined in CPL § 160.50 (3) and is thus subject to automatic sealing under that statute. An ACD dismissal is also subject to the benefits provided by CPL § 160.50 and upon receiving the dismissal "no such person shall be required to divulge information pertaining to the arrest or prosecution."

Conviction – Means the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument, other than a felony complaint, or to one or more counts of such instrument. [CPL § 1.20 (13)].

Crime – Means a misdemeanor or a felony. [PL § 10.00 (16)].

Felony - Means an offense for which a sentence to a term of imprisonment in excess of one year may be imposed. [PL § 10.00(5)].

Juvenile Delinquency – Means a person over seven and less than sixteen years of age, who, having committed an act that would constitute a crime (felony or misdemeanor) if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law. [Family Court Act § 301.2 (1)]. No adjudication under this type of proceeding may be denominated a conviction and no person adjudicated a juvenile delinquent shall be denominated a criminal by reason of such adjudication. Such adjudication "shall not operate as a disqualification of any person to pursue or engage in any lawful activity, occupation, profession or calling." (Family Court Act § 380.1).

Juvenile Offender – A youth aged 13, 14 or 15 who is prosecuted and convicted of certain felonies in adult criminal court as a juvenile offender is by law criminally responsible and as a result will have an adult criminal record and must report it as such, unless also adjudicated Youthful Offender. [CPL § 1.20 (42) and PL § 10.00(18)].

Misdemeanor - Means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed. [PL § 10.00 (4)].

Offense - Means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same. [PL § 10.00 (1)]. Included within this term are the terms crime, felony, misdemeanor, petty offense, violation and traffic infraction.

Petty Offense – Is the generic term for the non-criminal offense terms of "violation" and "traffic infraction." [CPL § 1.20 (39)].

Violation - Means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed. [PL § 10.00 (3)].

Youthful Offender – Means a person who has been charged in adult criminal court with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender who has been adjudicated a youthful offender by a finding, substituted for the conviction of an eligible youth, that he is a youthful offender and has had a youthful offender sentence imposed. (CPL §720.10). "A Youthful Offender adjudication is not a judgment of conviction for a crime or any other offense." [CPL § 720.35 (1)]. All official records relating to a case involving a youth who has been adjudicated a Youthful Offender are confidential. [CPL § 720.35 (2)].

Exhibit 16

Collateral Consequences of Conviction:

A Reminder of Some Possible Civil Penalties

Judge Harold Baer, Jr.

Rev. 11/1/11

THIS IS NOT A COMPLETE LIST—
CONSIDER ALL POTENTIAL PENALTIES.

You are required to advise your clients of immigration collateral consequences under *Padilla v. Kentucky*, and while this obligation does not extend to other collateral consequences—including the ones outlined below—it may be helpful in counseling your client. Let me stress that this is only an outline. The statutes and case law provide the detail.

The purpose of this guide is to serve as a reminder and alert you to various civil penalties that your client may face as a result of a criminal conviction in federal court and how those penalties may be overcome whenever possible. Keep in mind that ***many federal convictions may lead to civil consequences under state law.***

HOW TO USE THIS GUIDE

Talk to your client about the collateral consequences of a conviction in general, and especially about the specific collateral consequences that may accompany a conviction in his or her case. This guide lists some of the most common collateral consequences, but it does not include them all.

NOTE: Where restrictions are state-based, New York law on restrictions and relief is noted. You will, of course, have to determine restrictions and relief opportunities for other states should your client plan to return or settle outside New York State.

In New York, your client can apply for a Certificate of Relief from Disabilities (CRD) or a Certificate of Good Conduct (CGC) to restore many rights lost due to a criminal conviction. Your client can apply for a CRD if he or she was convicted of no more than one felony and can apply for a CGC if he or she was convicted of any number of crimes.

Only the State Board of Parole can issue CRDs and CGCs to eligible federal offenders. Under recent legislation, the Board will accept recommendations for CRDs for those convicted in New York federal courts from the Chief Probation Officer of the court where the conviction occurred; this is a far faster process than making an application to the State Board of Parole.

While lawyers who practice criminal law know about most, if not all, of these collateral consequences, this guide will at the very least help you zero in on the ones most relevant to your client's situation.

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Jury Service

Federal Jury Service:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FELONY CONVICTION OR INDICTMENT *28 U.S.C. § 1865(b)(5)*	Disqualified from serving on a federal grand jury or petit jury	**UNAVAILABLE** unless your client has his or her rights restored, usually by a state or federal pardon
NOTE: New York does not automatically restore jury service rights to those convicted of felonies.		

New York Jury Service:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FELONY CONVICTION *N.Y. Jud. Law § 510(3)*	Disqualified from serving on N.Y. State jury	**UNAVAILABLE** unless your client has rights restored by CRD, CGC or pardon

Voting Rights

New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FELONY CONVICTION *N.Y. Elec. Law § 5-106(2)*	Disqualified from voting under N.Y. law while in prison *and* while on parole	**AVAILABLE** right to vote automatically restored *after* parole **NOTE:** Your client should be provided with a registration form and informed of his or her right to vote upon completion of parole
NOTE: Qualifications for voting in federal elections are determined by state law in accordance with the U.S. Constitution. New York automatically restores the right to vote after parole.		

Federal Aid

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
CONVICTION FOR POSSESSION OF CONTROLLED SUBSTANCE *20 U.S.C. § 1091(r)*	Ineligible for federal assistance if conviction was during period when receiving aid	**AVAILABLE** for possession conviction -1st conviction: barred for 1 year -2nd conviction: barred for 2 years -3rd conviction: permanently barred from receiving financial aid
CONVICTION FOR SALE OF CONTROLLED SUBSTANCE *20 U.S.C. § 1091(r)*	Ineligible for federal assistance if conviction was during period when receiving aid	**AVAILABLE** for distribution conviction -1st conviction: barred for 2 years -2nd conviction: permanently barred from receiving financial aid

State-Based Aid

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
CONVICTION FOR POSSESSION OR SALE OF CONTROLLED SUBSTANCE	Depends on the state	**VARIES** by state
NOTE: New York does not use the FAFSA, which asks about controlled substance convictions, in determining aid eligibility. Instead, New York uses taxable income to determine eligibility.		

Federal Licensing Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DEPENDS ON LICENSE SOUGHT	May be automatic or discretionary	**AVAILABLE** depending on conviction -if under 21 years old when convicted of simple possession of a controlled substance, crime may be expunged from record -presidential petition -intra-agency appeal after license denial -judicial review of agency licensing decision

N.Y. Licensing Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DEPENDS ON LICENSE SOUGHT **NOTE:** All licenses in New York may effectively be denied on character grounds (i.e. when there is a direct relationship between the conviction and the license sought) EX: denial of an accounting license (CPA) where your client has a previous gambling conviction	May be automatic or discretionary	**AVAILABLE** -with CGC or CRD -entitled to hearings before N.Y. Department of State prior to a license denial
NOTE: Employers must consider CRDs and CGCs when your client applies for jobs.		

Specific Employment Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
FELONY CONVICTION for inciting or organizing a riot or civil disorder *5 U.S.C. §7313*	Removal from federal office and ineligibility for employment by U.S. government for 5 years	**UNAVAILABLE** -but ineligibility terminates after 5 years
FELONY CONVICTION *10 U.S.C. § 504(a)*	-ineligible to enlist in any service of the armed forces	**UNAVAILABLE** -unless an exception is made by the Secretary concerned

NOTE: There are many other employment restrictions arising from federal convictions that you should research if they are relevant to your client.

NOTE: As a condition of probation or supervised release, a judge may impose professional restrictions upon occupations that are reasonably related to the conviction.

Right to Marry

New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
LIFE SENTENCE *N.Y. Civ. Rights § 79-a(1)*	People are considered "civilly dead" and ineligible to marry while serving life sentence	**UNAVAILABLE** -eligibility to marry returns once your client is on parole
SENTENCE > THAN 3 YEARS *N.Y. Dom. Rel. § 170(3)*	"Fault" ground for divorce in New York	**N/A**

Retaining Custody of Children

New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY INCARCERATION OF A PARENT THAT CAUSES A CHILD TO BE IN FOSTER CARE FOR > 15 OUT OF LAST 22 MONTHS *N.Y. Soc. Serv. § 384-b(3)(l)*	Foster care agency may seek termination of parental rights	**AVAILABLE** -in New York, foster care agencies may extend time limits for parental termination where incarceration or participation in residential substance abuse treatment program is a significant factor in why a child has been in foster care, if your client maintains a meaningful role in child's life

Right to Adopt

New York:

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
FELONY CONVICTION INVOLVING: A. I. child abuse or neglect; ii. spousal abuse; iii. crime against a child, including child pornography; iv. crime involving violence, including rape, sexual assault, or homicide (except for crimes involving physical assault or battery) OR B. felony conviction within past 5 years for physical assault, battery or drug related offense *N.Y. Soc. Serv. Law § 378-a(2)(e)*	Disqualified from adopting or becoming a foster parent	**UNAVAILABLE** -But a recent N.Y. State decision from the Bronx Family Court (*In Re the Adoption of Abel*, No. A8856/11) found that this law was unconstitutional as-applied so be sure to read the decision and advise your client accordingly
ANY CRIME *N.Y. Soc. Serv. Law § 378-a(2)(e)*	May be disqualified from adopting or becoming a foster parent and those your client lives with may be disqualified	**AVAILABLE** -bar is not automatic, but at the discretion of the foster care agency

Federal Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FELONY CONVICTION OR INDICTMENT WITHOUT TRIAL OR CONVICTION *18 U.S.C. § 922(d)*	Prohibited from selling or disposing of firearms or ammunition while under indictment or post-conviction	**UNAVAILABLE**
FELONY CONVICTION 18 U.S.C. § 922(g)	Prohibited from possessing a firearm	**AVAILABLE** -but must be accomplished under federal rather than state law
MISDEMEANOR DOMESTIC VIOLENCE CRIMES *18 U.S.C. § 922(g)*	Prohibited from possessing a firearm	**AVAILABLE** -but must be accomplished under federal rather than state law

N.Y. Restrictions

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
FELONY CONVICTION *N.Y. Penal Law § 265.01(4)*	Prohibited from possessing a firearm	**AVAILABLE** -if your client is convicted of a lower-level, nonviolent state felony your client can obtain a CGC
FELONY CONVICTION AND OTHER SERIOUS CRIMES (including possession of stolen property, stalking, permitting or promoting prostitution, endangering the welfare of a child) *N.Y. Penal Law § 400.00(1)(c)*	Prohibited from receiving a firearm license	**UNAVAILABLE**

PASSPORT AND DRIVER LICENSE RESTRICTIONS

Passport

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY FEDERAL OR STATE DRUG OFFENSE if crossed international boundary in committing crime *22 U.S.C. § 2714(a)*	Passport may not be issued and existing passport may be revoked	**AVAILABLE** -expires once no longer on parole or supervised release

Driver License

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DRUG OFFENSE *N.Y. Veh. & Traf. Law § 510(2)(b)*	License suspended for 6 months or more	**AVAILABLE** -may be eligible for a restricted license during suspension period
OFFENSES INVOLVING AUTOMOBILE (including any felony) *N.Y. Veh. & Traf. Law § 510(2)(a)*	May trigger automatic license revocation	**AVAILABLE** -may be eligible for restricted license during revocation period
NOTE: These are N.Y. state restrictions, not federal restrictions.		

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
AGGRAVATED FELONY CONVICTION *8 U.S.C. § 1227(a)(2)(A)(iii);* *8 U.S.C. § 1182(a)(2);* *8 U.S.C. § 1427(d)*	Ground for deportation; permanently denied reentry; ineligible to be citizen; ineligible for asylum	**UNAVAILABLE** -but may obtain relief through pardon
CONTROLLED SUBSTANCE CONVICTION *8 U.S.C. § 1227(a)(2)(B)(i);* *8 U.S.C. § 1182(a)(2)(C);* *8 U.S.C. § 1427(d)*	Ground for deportation; permanently denied reentry; ineligible to be citizen	**UNAVAILABLE** -except possible waiver as a ground of inadmissibility or deportation where first offense of possession of 30g or less of marijuana
CRIMES INVOLVING MORAL TURPITUDE (CIMT) *8 U.S.C. § 1227(a)(2)(A)(i);* *8 U.S.C. § 1182(a)(2)(A)(i)(I);* *8 U.S.C. § 1427(d)* EX: some forms of fraud, larceny, and crimes involving the intent to harm persons or things; *can even include misdemeanors*, such as theft of services, and others	Ground for deportation if 1 is w/in 5 years of admission to United States and sentence of 1 year+ imposed OR 2 different crimes any time; permanently denied reentry; ineligible to be citizen (unless single CIMT not punishable for >1 year)	**UNAVAILABLE** -but may obtain relief through pardon
FIREARM/ DESTRUCTIVE DEVICE CONVICTION *8 U.S.C. § 1227(a)(2)(C)*	Ground for deportation	**UNAVAILABLE** -but may obtain relief through pardon

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DOMESTIC VIOLENCE CONVICTION OR RELATED OFFENSES *8 U.S.C. § 1227(a)(2)(E)*	Ground for deportation	**UNAVAILABLE** -but may obtain relief through pardon
PROSTITUTION AND COMMERCIALIZED VICE *8 U.S.C. § 1182 (a)(2)(D)*	Permanently denied reentry	**UNAVAILABLE** -but may obtain relief through pardon
CONVICTION OF >2 OFFENSES OF ANY TYPE + AGGREGATE PRISON SENTENCE OF 5 YEARS *8 U.S.C. § 1182(a)(2)(B);* *8 U.S.C. § 1427(d)*	Permanently denied reentry; ineligible to be citizen	**UNAVAILABLE** -but may obtain relief through pardon
2 GAMBLING OFFENSES *8 U.S.C. § 1427*	Ineligible to be citizen	**UNAVAILABLE** -but may obtain relief through pardon
CONFINEMENT FOR AGGREGATE 180 DAYS *8 U.S.C. § 1427(d)*	Ineligible to be citizen	**UNAVAILABLE** -but may obtain relief through pardon

NOTE: Grounds for Deportation apply to ***lawfully*** admitted noncitizens.

NOTE: A conviction renders an LPR ineligible to be a citizen because it bars a finding of good moral character required for citizenship for up to 5 years under 8 U.S.C. § 1427(d).

NOTE: Illegal reentry (8 U.S.C. § 1326) is itself a felony that may be a ground of deportation or inadmissibility, render your client ineligible for citizenship or asylum, or lead to enhanced sentences based on the underlying crime.

NOTE: Contact U.S. Immigration and Customs Enforcement to determine if any other relief is available.

Federally Funded Contracts, Loans and Licenses

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
DRUG POSSESSION CONVICTION *21 U.S.C. § 862(b)* **DRUG TRAFFICKING CONVICTION** *21 U.S.C. § 862(a)*	Disqualified from receiving any grant, contract, loan, professional license or commercial license provided for or funded by the U.S. government at the discretion of the court	**AVAILABLE** for a possession conviction **NOTE:** Disqualification may last for up to 1 year **AVAILABLE** (except after third offense) for trafficking **NOTE:** Disqualification can last for a maximum of 5 years for a first offense, 10 years for a second offense, and may become permanent after a third offense

Cash Assistance, TANF Funds and Food Stamps

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY DRUG-RELATED FELONY *21 U.S.C. § 862a*	Disqualified from receiving cash assistance or TANF funds and from obtaining food stamps	**UNAVAILABLE** -disqualification is permanent
NOTE: New York does not disqualify those convicted of drug-related felonies, but other states do.		

Public Housing

CRIME OF CONVICTION	RESTRICTION	AVAILABLE RELIEF
ANY CRIMINAL ACTIVITY THAT: 1. threatens health, safety or right to peaceful enjoyment of the premises by other tenants OR 2. any drug-related criminal activity on or off such premises engaged in by a public housing tenant, any member of tenant's household, or any guest or other person under tenant's control *42 U.S.C. § 1437f(d); NYCHA Regulations*	Public Housing Authority MAY evict your client if there is some evidence of criminal activity, *even if your client is not convicted*	**AVAILABLE** -bar from public housing is discretionary and not mandatory in *most* cases, but see note below
NOTE: If your client is concerned about a public housing application, whether to federally funded housing or NYCHA, you should research the specific offenses that *definitely* bar housing applications versus those that *may* bar housing applications.		

USEFUL WEBSITES

Collateral Consequences of Criminal Charges
http://www2.law.columbia.edu/fourcs/

Collateral Consequences Calculator
http://calculator.law.columbia.edu/

NYSDA Immigrant Defense Project
http://www.immigrantdefenseproject.org/

Sentencing Project Collateral Consequences
http://www.sentencingproject.org/

Reentry Net
http://www.reentry.net/