



THRIVE Technical Assistance Program

Careers and Criminal Justice-Affected People in New York



College &
Community
Fellowship

Legal Protections for People with Criminal Justice Histories

The Fair Chance Act (Article 23-A)

As of October 27, 2015, in New York City it is illegal to:

- Declare, print, or circulate - 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."
- Making any statement or inquiry regarding criminal history before a conditional offer of employment, even if no adverse action follows.
- Withdrawing a conditional offer of employment based on an applicant's criminal history before completing the Fair Chance Process.
- Failing to disclose to the applicant a written copy of any inquiry an employer conducted into the applicant's criminal history.
- Failing to share with the applicant a written copy of the employer's Article 23-A analysis.
- Failing to hold the prospective position open for at least three business days, from the applicant's receipt of both the inquiry and analysis, to allow the applicants to respond.
- Taking and adverse employment action because of an applicant's non-conviction.

For a full copy of the Fair Chance Act, outlining the laws around unfair discrimination against persons previously convicted of one or more criminal offenses, factors to be considered concerning a previous criminal conviction, and written statement upon denial of license or employment, please see the back of this booklet. You will also find analysis of the Fair Chance Act from the NYC Commission on Human Rights.

Legal Protections for People with Criminal Justice Histories

Criminal Convictions and Nursing in NYS

Many people with CJ histories who are interested in nursing mistakenly believe that there is a blanket ban on nursing for anyone with a conviction. This not necessarily the case. [Click here for answers to frequently asked questions about nursing licensing.](#)

Must I disclose criminal convictions or prior misconduct when I apply for a New York State Nursing License?

When you apply for a nursing license or to renew your nursing 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 license 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?
- You must report all criminal convictions and disciplinary actions against you, regardless of whether it occurred in New York State or elsewhere. You do not have to disclose "youthful offender" offenses, if your records have been sealed.

Will a prior criminal conviction prevent me from obtaining a license or registration to practice nursing in New York?

Not necessarily. As part of the review of your license or registration application, the New York State Education Department (NYSED) will review your background including your prior conviction(s). NYSED decides on a case by case basis whether your prior criminal conviction(s) will disqualify you from being licensed as a nurse in New York.

Steps Criminal Justice-Affected People Can Take to Prepare for Employment

Federal Bonding Program

The Federal Bonding Program is a hiring incentive tool targeting individuals whose backgrounds can pose significant barriers to securing or retaining employment, including:

- Justice-involved citizens
- Individuals in recovery from substance use disorders
- Public assistance recipients
- Individuals with poor credit records
- Economically disadvantaged youth and adults who lack work histories
- Individuals dishonorably discharged from the military

FBP bonds protect the employer for employee dishonesty including: theft, forgery, larceny, and embezzlement. Employers receive the FBP bonds free of charge as an incentive to hire these applicants. Each FBP bond has a \$5,000 limit with \$0 deductible and covers the first six months of a selected individual's employment. Bonds can be applied to:

- ANY job
- ANY State
- ANY employee dishonesty committed on or away from the work site
- ANY full- or part-time employee paid wages (with Federal taxes automatically deducted from pay), including individuals hired by temp agencies. *Self-employed people cannot be covered by Fidelity Bonds

[Click here to learn more about the Federal Bonding Program.](#)

Steps Criminal Justice-Affected People Can Take to Prepare for Employment

Certificate of Relief

When someone with a criminal justice history obtains a certificate of relief, it is a show of rehabilitation. These certificates are necessary for licensure. Employers bear the strong burden of proving that a person with a criminal conviction is not suitable for a job if that person possesses a certificate of relief.

Who is eligible for a Certificate of Relief?

You are eligible for a Certificate of Relief from Disabilities if you have been convicted of any number of misdemeanors and no more than one felony (two or more felony convictions in the same court on the same day are counted as one felony for deciding which certificate you are eligible for).

The term “disability” refers to laws that disqualify people from holding certain jobs or other rights because of their conviction.

The Department of Corrections and Community Supervision (DOCCS) may also issue you a Certificate of Relief if you are an eligible individual who has been convicted in another state or in federal court and who now resides in New York State.

A Certificate of Relief from Disabilities may be issued upon an eligible individual’s release from a correctional facility or, with the recommendation of the supervising Parole Officer, at any time while under Community Supervision.

What effect does a Certificate of Relief have on my status?

A Certificate of Relief may remove any mandatory legal bar or disability imposed as a result of conviction of the crime or crimes specified in the certificate. The Certificate of Relief does not, however, enable you to retain or become eligible for public office.

Note that removing mandatory legal bars restores your right to apply and be considered for employment or license, but does not guarantee it will be granted.

A Certificate of Relief issued to you upon release or once you are on parole supervision is a temporary certificate. This certificate becomes permanent when you are discharged from supervision. While it is temporary, the certificate may be revoked by action of DOCCS.

[Click here to learn more.](#)

Steps Criminal Justice-Affected People Can Take to Prepare for Employment

Certificate of Good Conduct

When someone with a criminal justice history obtains a certificate of good conduct, it is a show of rehabilitation. These certificates are necessary for licensure. Employers bear the strong burden of proving that a person with a criminal conviction is not suitable for a job if that person possesses a certificate of good conduct.

Who is eligible for a Certificate of Good Conduct?

You are eligible for a Certificate of Good Conduct if you have been convicted of two or more separate felonies. You must show that you have completed/achieved a certain period of good conduct in the community. You must wait 5 years if the most serious felony on your criminal record is an A or B, 3 years if the most serious felony on your criminal record is a C, D or E felony, or 1 year if you only have misdemeanors on your criminal record.

The waiting period starts when you were last released from incarceration (prison or jail) to Community Supervision, or were released from incarceration (prison or jail) by maximum expiration of your sentence, or at the time of your last criminal conviction (whichever of these events comes last).

DOCCS may also issue you a Certificate of Good Conduct if you are an eligible individual who has been convicted in another state or in federal court and who now lives in New York State. The good conduct waiting period will be determined by what level the conviction would be considered in New York State.

What effect does a Certificate of Good Conduct have on my status?

A Certificate of Good Conduct has the same effect as the Certificate of Relief. In addition, the Certificate of Good Conduct may restore your right to seek public office. The certificate may remove all legal bars or disabilities or remove only specific bars or disabilities.

The Certificate of Good Conduct issued to you while under parole supervision is a temporary certificate. The certificate will become permanent upon discharge from supervision.

[Click here to learn more.](#)

Steps Criminal Justice-Affected People Can Take to Prepare for Employment

Work Opportunity Tax Credit

The Work Opportunity Tax Credit (WOTC) is a Federal tax credit available to employers for hiring individuals from certain targeted groups, including people with felony convictions, who have consistently faced significant barriers to employment. WOTC joins other workforce programs that incentivize workplace diversity and facilitate access to good jobs for American workers.

[Click here to learn more about who qualifies as a "targeted group."](#)

[Click here to learn more about the Work Opportunity Tax Credit.](#)

NEW YORK CORRECTION LAW
ARTICLE 23-A

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

Section 750. Definitions.

751. Applicability.

752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.

753. Factors to be considered concerning a previous criminal conviction; presumption.

754. Written statement upon denial of license or employment.

755. Enforcement.

§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.

FAQs for Fair Chance Act

1. Can an employer state that a “background check” is required for a position, or put “background check required” in a job advertisement or application?

No, an employer cannot state that a background check is required nor can an employer put on a job advertisement or application that a background check is required, unless the position is specifically exempted under the Fair Chance Act. The Fair Chance Act defines prohibited inquiries and statements broadly, including those that express any limitation, directly or indirectly, based on a person’s arrest or criminal conviction.

If an employer wishes to inform an applicant that it will investigate the applicant’s background prior to a conditional offer, it should specifically identify what it will investigate rather than use the blanket term “background check.” For example, an employer can state that it is conducting a “reference check,” an “employment or education verification,” or a “resume authentication.”

2. After a conditional offer of employment, what can an employer ask an applicant about his/her arrest/conviction history?

After a conditional offer, an employer may ask an applicant if s/he has any history of convictions. An employer may also ask about the circumstances that led to any conviction, including the arrest leading to the conviction and original charges, to determine how serious the applicant’s conduct was. However, an employer may never ask about arrests that did not lead to convictions; convictions that were sealed, expunged, or reversed on appeal; convictions for violations, infractions, or other petty offenses such as “disorderly conduct;” resulted in a youthful offender or juvenile delinquency finding; or convictions that were withdrawn after completion of a court program. The following is an example of a permissible question after a conditional offer:

Have you ever been convicted of a misdemeanor or felony? Answer “NO” if your conviction: (a) you have never been convicted of a misdemeanor or felony; (b) the misdemeanor or felony was sealed, expunged, or reversed on appeal; (c) was for a violation, infraction, or other petty offense such as “disorderly conduct;” (d) resulted in a youthful offender or juvenile delinquency finding; or (e) if you withdrew your plea after completing a court program and were not convicted of a misdemeanor or felony.

3. Do the protections of the Fair Chance Act apply when a person has convictions from outside New York, particularly if the conviction is not a crime in New York?

Yes, the Fair Chance Act applies to all criminal convictions, no matter where they occurred.

4. Does the Fair Chance Act apply to volunteers or unpaid interns at an organization?

No, the Fair Chance Act, as part of the New York City Human Rights Law, does not apply to volunteers, but it does apply to unpaid interns. An intern is covered under the New York City Human Rights Law if: (a) the individual works for a fixed period of time at the end of which there is no expectation of employment; (b) the individual performing the work is not entitled to wages for the work performed; and (c) the work performed: (i) supplements training given in an educational environment that may enhance the employability of the intern; (ii) provides experience for the benefit of the individual performing the work; (iii) does not displace regular employees; and (iv) is performed under the close supervision of existing staff. N.Y.C. Admin. Code § 8-102(28).

5. Does an employer's conditional offer have to be in writing?

No, the conditional offer may be made orally. However, there are other important steps in the employment process that must be made in writing. Specifically, if an employer is considering withdrawing a conditional offer after reviewing an applicant's conviction history, it must provide certain information in writing. The employer's analysis of an applicant's conviction history under Article 23-A must be in writing along with a copy of any background check the employer used in making its determination.

6. If a position is exempt from the Fair Chance Act, does the employer still have to follow Article 23-A with respect to the hiring process for that position?

Yes, the employer must still make employment decisions consistent with Article 23-A. Although the employer can consider an applicant's conviction history before making a conditional offer for positions that are exempt from the Fair Chance Act, the employer must still consider the Article 23-A factors in making a decision not to hire that person. Applicants who are denied employment may request an explanation, which must be provided within 30 days under New York Correction Law § 754. The only positions that are exempted from the requirements of Article 23-A are law enforcement positions.

NYC Commission on Human Rights Legal Enforcement Guidance on the Fair Chance Act, Local Law No. 63 (2015)

6/24The 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

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’t 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).

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.

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.aspx?M=F&ID=3410594&GUID=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.

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

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).

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.”⁹
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:
 - a) Failing to disclose to the applicant a written copy of any inquiry an employer conducted into the applicant’s criminal history;
 - b) Failing to share with the applicant a written copy of the employer’s Article 23-A analysis;
 - c) 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.¹⁰

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.¹¹ 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.*

⁹ See discussion regarding language that encourages individuals with criminal history to apply *infra* p. 5.

¹⁰ 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.

¹¹ 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).

The FCA now explicitly prohibits employers from expressing any limitation or specification based on criminal history in their job advertisements,¹² even though such advertisements are already illegal under the existing NYCHRL.¹³ 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.

¹² *Id.* § 8-107(11-a)(a)(1).

¹³ 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).

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;¹⁴ and
- Once an employer knows about an applicant's conviction, ask her or him about the circumstances that led to it and begin to gather information relevant to every Article 23-A factor.

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."¹⁵

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.

¹⁴ 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).

¹⁵ N.Y. Correct. L. § 752.

An employer cannot simply presume a direct relationship or unreasonable risk exists because the applicant has a conviction record.¹⁶ 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.¹⁷
- 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.¹⁸ 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;¹⁹
- 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.²⁰

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

¹⁶ *Bonacorsa v. Van Lindt*, 71 N.Y.2d 605, 613-14 (N.Y. 1988).

¹⁷ *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)).

¹⁸ *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)

¹⁹ 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.

²⁰ N.Y. Correct. L. § 753(2). An employer may not disfavor an applicant because she or he does not possess a certificate.

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.”²¹ The Commission will also consider Article 23-A case law.²² Employers must evaluate each Article 23-A factor; they cannot ignore evidence favorable to the applicant;²³ and they cannot disproportionately weigh any one factor over another.²⁴ 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.²⁵

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.²⁶ 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 provide a written summary of their conversation. The summary must contain the same information the employer relied on in reaching its determination, and it should identify whether that information was provided by the applicant.

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.²⁷ The Commission has prepared a Fair

²¹ Governor’s Approval Mem., Bill Jacket, L. 1976, ch. 931.

²² 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.

²³ *Gallo v. N.Y. State Office of Mental Retardation & Developmental Disabilities*, 830 N.Y.S.2d 796, 798 (N.Y. App. Div. 2007).

²⁴ *Soto*, 26 Misc. 3d 1215(A) at *7.

²⁵ *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).

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

²⁷ N.Y.C. Admin. Code § 8-107(11-a)(b)(ii).

Chance Notice (the “Notice”)²⁸ 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.²⁹ 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.³⁰ 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

²⁸ The Notice is available on the Commission’s website, <http://www.nyc.gov/FairChanceNYC>.

²⁹ N.Y. Correct. L. § 753(1)(h).

³⁰ N.Y.C. Admin. Code § 8-107(11-a)(b).

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 2005,³¹ 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

³¹ N.Y.C. Local Law No. 85 (2005); N.Y.C. Admin. Code § 8-130.

based on criminal history.³² 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”).³³ 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.³⁴ 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”).³⁵ 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.³⁶

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.

³² N.Y.C. Admin. Code § 8-107(11-a)(e).

³³ N.Y. Exec. L. § 845-b.

³⁴ *Id.* at 845-b(5)(a).

³⁵ 15 U.S.C. § 78c(a)(26).

³⁶ N.Y. Correct. L. § 750(5).

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.³⁷

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.³⁸

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;

³⁷ N.Y.C. Admin. Code § 8-107(11-a)(f)(2).

³⁸ After hire, the employee’s supervisor or manager may also be informed of the applicant’s criminal record.

- 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 inquiries and adverse actions based on non-convictions when a person is seeking credit.



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

Department of Corrections and Community Supervision Certificate of Relief from Disabilities - Certificate of Good Conduct Application and Instructions

This is your application for a Certificate of Relief from Disabilities or for a Certificate of Good Conduct. Please review this information carefully. Then, complete the application as best you can. If you leave out information, it could take longer for the Department of Corrections and Community Supervision (DOCCS) to make a decision about your application.

1) How do I know if I am eligible - Who can apply?

The information below can help you understand if you are eligible. For more information, you can read Article 23 (Sections 700-706) of the New York State Correction Law.

I. Eligibility

- A. **CERTIFICATE OF RELIEF FROM DISABILITIES:** You are eligible for this certificate if you have been convicted of any number of misdemeanors and no more than one felony (two or more felony convictions in the same court on the same day are counted as one felony for deciding which certificate you are eligible for). The term “disability” refers to laws that disqualify people from holding certain jobs or other rights because of their conviction.
- B. **CERTIFICATE OF GOOD CONDUCT:** You are eligible for this certificate if you have been convicted of two or more separate felonies or if you are seeking a job that is specifically considered a “public office”. You must show that you have completed/achieved a certain period of good conduct in the community. You must wait 5 years if the most serious felony on your criminal record is an A or B felony, 3 years if the most serious felony on your criminal record is a C, D or E felony, or 1 year if you only have misdemeanors on your criminal record. The waiting period starts when you were last released from incarceration (prison or jail) to community supervision, or were released from incarceration (prison or jail) by maximum expiration of your sentence, or at the time of your last criminal conviction (which ever of these events comes last). If you were convicted in another state or in federal court, the waiting period will be determined by what the level of the conviction would be considered in New York State.

DOCCS will only consider applications for Certificates of Good Conduct for public office if the application lists a specific public office and includes information about laws that prevent the individual from holding the office they want the Certificate for.

2) Where do I apply?

For Certificates of Relief From Disabilities, you should apply to the court that sentenced you unless:

1. you were sentenced to a New York State (DOCCS) correctional facility, or
2. you were convicted in a federal court or a court in another state and you are now a resident of New York State. Certificates in these cases are issued by the New York State Department of Corrections and Community Supervision (DOCCS).

For Certificates Of Good Conduct, you must apply to the Department of Corrections and Community Supervision.

Once you have decided which certificate you are eligible for, you should apply to the appropriate agency/location.

- If you are applying to the DOCCS, fill out and mail the attached application to DOCCS at the address on page 5.
- If you are applying to the sentencing court, you can get contact information from a telephone directory or at www.nycourts.gov. Do not submit this application form to the sentencing court. Courts use a different application form.

If you want information about restoring your firearms rights/privileges and were convicted of a felony in a Federal Court, you must seek/request relief from the United States Department of Justice, Office of the Pardon Attorney (www.justice.gov/pardon).

3) What do I need to provide to DOCCS to get my application considered?

- The Original Application Form – signed and notarized
- Copies of your Federal Income Tax Filings for the last two (2) years if you were required to file a tax return.
- Copies of your Statement and Wages (Tax Form W-2) for the last two (2) years if you earned wages.
- Copies of any miscellaneous income statements (Tax Form 1099) for the last two (2) years if you received one.

If you do not have copies of any of the documents listed above, you may contact the IRS at 1-800-829-1040. They will provide you with a copy of your records.

If you received public assistance, unemployment insurance, or Social Security benefits for any or all of this two year period, you must include a printout from the agency that provided you with these benefits/support, showing all the benefits that you received. If you had no reportable income for any or all of this two year period (including any other benefits not listed above), you must provide /submit a notarized document explaining how you supported yourself.

4) **What can I expect after my application has been submitted to DOCCS for review?**

Once we receive your application, DOCCS will assign a field Parole Officer for an investigation. The Officer will review:

1. Employment history and how you have supported yourself.
2. Proof that you have paid income taxes for the last two years.
3. Proof that you have paid any fines or restitution set by the courts.

After DOCCS has received all necessary documents and records from you, the field Parole Officer assigned to you will contact you to arrange an interview at your home/residence to answer any remaining questions and confirm your current circumstances and living situation. The New York State Department of Corrections and Community Supervision will then examine your application to decide whether to grant you a certificate. Under the law, DOCCS may choose to remove one, more than one, or all allowable disabilities (restrictions created by law because of your conviction history). Note that, under the law, individuals with certain conviction histories may be ineligible to have their firearm rights restored.

5) **How long will the process take?**

This will vary depending on the complexity of your case. The process will involve a complete review of the information you provide. Processing times depend on how complete the information you provide to DOCCS is. The assigned Parole Officer will review and check all of the information you provide. The process will be completed more quickly if you provide complete and accurate information to the best of your ability and are available to the Parole Officer when he or she contacts you.

The Parole Officer will want to see what you have been doing since your last conviction or release, including information about:

- Going to school – such as a transcript or a letter from a teacher or school administrator;
- Job Training – such as a letter from a program supervisor or administrator;
- Employment – such as letters from supervisors or other people who worked with you;
- Counseling or social service program – such as a letter from a counselor, therapist or doctor;
- Letters from Parole or Probation Officers;
- Letters from clergy;
- Letters from volunteer work

You do **NOT** need all of these items, only those that apply to you. For more examples, visit: http://lac.org/wp-content/uploads/2014/12/How_to_Gather_Evidence_of_Rehabilitation_2013.pdf

Please note that the process will be delayed if you move any time after you submit your application. It is therefore very important for you to let the Certificate Review Unit know if you move/relocate or change your phone number after you submit your application.

6) Who should I contact if I have questions or need help?

You can call DOCCS's Certificate Review Unit at (518) 485-8953.

You can also contact the following organizations who are familiar with the process and have experience assisting applicants

Anywhere in New York State (including New York City):

- Legal Action Center - (212) 243-1313

New York City:

- Community Service Society – (212) 614-5441
- Neighborhood Defenders of Harlem (northern Manhattan residents; 96th street and above) – 212-876-5500
- Youth Represent – (212) 553-6421 or by email at info@youthrepresent.org (if you are under the age of 24);
- Bronx Defenders – (718) 838-7878 or walk-in Monday to Friday from 9 AM to 5 PM at their Client Reception space at 360 East 161st Street; (if you live in the Bronx)

Upstate New York

- Legal Assistance of Western New York (LAWNY) – LAWNY has 6 offices serving 14 counties in western New York: Allegany, Cattaraugus, Chautauqua, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne and Yates Counties.
 - Bath – (607) 776-4126,
 - Elmira – (607) 734-1647,
 - Geneva (315) 781-1465,
 - Ithaca – (607) 273-3667,
 - Jamestown - (716) 664-4535,
 - Rochester - (585) 325-2520.
- Legal Aid Bureau of Buffalo - (716) 855-1553 (if you live in Erie County)

7) Where should I send my completed application?

To apply to DOCCS, please complete the attached application form and return the original copy with all signatures notarized, to this address:

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
ATTN: CERTIFICATE REVIEW UNIT
The Harriman State Campus – Building 2
1220 Washington Avenue
Albany, NY 12226-2050
(518) 485-8953

To find out how to apply to the court that sentenced you, you can find the contact information for the court in a phone directory or by visiting the web at www.nycourts.gov.

If you want to restore your firearms rights/privileges and were convicted of a felony in a Federal Court, you must seek/request relief from the United States Department of Justice, Office of the Pardon Attorney (www.justice.gov/pardon).

IMPORTANT INFORMATION (Detach and retain for your records)

If you are granted a Certificate, the Certificate will remove disabilities (such as license disqualifications) caused by your conviction but **it will not remove, seal, erase or expunge the underlying conviction**. You will still have a conviction and will have to tell employers and licensing agencies about the conviction if they ask.

A Certificate also does not limit the right of a prospective employer or licensing agency from using their lawful discretion to refuse you employment, or to refuse to grant or renew any license, permit, or privilege.

A Certificate is not needed to restore your right to register for or vote in an election. Those rights are completely restored when you reach the maximum expiration date of your sentence or the termination of your sentence (Executive Law §259-j or Correction Law §205).

CERTIFICATE APPLICATION

PURPOSE FOR REQUESTING CERTIFICATE:

Please provide your reason(s) or purpose for requesting a certificate:

Only check the reason(s) of primary interest to you:

- Secure employment and/or improve employment opportunities
- School bus driver
- Notary Public
- Long guns
- Handguns
- Other (Please specify) _____

For Long guns and/or Handguns please specify reason(s) for request (i.e., Hunting, Target, Armed Security Work, etc): _____

APPLICANT IDENTIFYING INFORMATION:

Name: _____
(Last) (First) (Middle) (Suffix)

Date of Birth: _____

Gender: Male Female

Race:

- White
- Black/African American
- American Indian
- Asian
- Other

Ethnicity:

- Hispanic
- Non-Hispanic

Social Security Number: _____ - _____ - _____

Height: _____ Weight: _____ Eye Color: _____ Hair Color: _____

Have you ever been known by any other legal name or alias other than the name on this application?
If yes, indicate below and state reason(s) for change of name:

Name

Reason for Legal Name Change

EMPLOYMENT HISTORY:

To the best of your knowledge, list your occupations/jobs and employers for the past two (2) years. Start with your present employer and work back. For each period of unemployment, provide dates:

Dates (mo. & yr.)		Occupation Job/Position	Name & Address of employer	Full or P/T	Immediate Supervisor	Weekly Salary
From	To					
Present						

DOCCS will only contact an employer as part of the investigation process if after your interview there is information that requires additional verification and DOCCS will not discuss your conviction with any employer.

CITIZENSHIP:

Are you a citizen of the Unites States? (check one)

Yes, by birth Yes, by Naturalization, Certificate Number _____

If not a citizen, provide _____
Alien registration Number Country

MILITARY SERVICE HISTORY:

If you ever served in the Unites States military, please provide:

Branch of Service: _____ Date of entry into Active Duty: _____
 Date of Discharge: _____ Honorable Discharge: Yes No

LEGAL HISTORY:

If known: NYSID # _____ FBI # _____ Prison # _____

Record of out-of-state or federal convictions (DOCCS has access to your New York conviction information):

To the best of your knowledge, please list all out-of-state or federal convictions and adjudications.

Conviction Date	Court of Conviction (Include State, County and/or City)	Conviction Charge (Do not use codes)	Sentence
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If you have been on out-of-state or federal probation/parole, please check below:

Probation Parole

From To To the best of your knowledge Parole/Probation Officer's name and address where you reported

_____	_____	_____
_____	_____	_____

If you were committed to local jail or other adult facility in the past two (2) years, please provide the information below to the best of your knowledge:

Date of Conviction Conviction Charge Name of Facility/Institution and Location Date of Release

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If you previously applied for a Certificate of Relief from Disabilities, please provide:

Place: _____ Date: _____ Was it granted: _____

If you previously applied for a Certificate of Good Conduct, please provide:

Place: _____ Date: _____ Was it granted: _____

Have you ever had an Order Of Protection (OOP) issued against you?
If yes, please provide the information below to the best of your knowledge.

Date of OOP Issuance	Court of OOP Issuance	Person(s) Protected by OOP	Date of OOP Expiration
_____	_____	_____	_____
_____	_____	_____	_____

SOCIAL STATUS:

Marital Status: Single Married Separated Divorced Widow(er) Annulled

How many times have you been married? _____

For each marriage, please give the following information:

Name Used (If different from name used on this application)	Wife's Maiden Name or Husband's Full Name	Date Married/ Divorced
_____	_____	_____
_____	_____	_____
_____	_____	_____

If during the past two (2) years you lived with a roommate(s) or live-in partner(s) to whom you were not legally married, please provide name(s) and current address below.
Use reverse side of paper if additional space is required.

Name	Address
_____	_____
_____	_____
_____	_____

LICENSE INFORMATION:

Licenses you hold (Motor Vehicle, Trade, Professional or Pistol Permit):

Please use reverse side of paper if additional space is required.

Type of License	Licensing Agency	License Number	Date Issued	Expires
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

REFERENCES:

Please provide the complete names and mailing addresses of two (2) people who we can contact to provide character references on your behalf:

Name	Address	Phone
_____	_____	_____
_____	_____	_____

I agree to allow an investigation to be made to determine my fitness for a certificate pursuant to Article 23 of the NYS Correction Law. I hereby certify that I have fully and truthfully answered all of the above questions.

Applicant's Signature: _____ Date: _____

MUST BE SIGNED BY A NOTARY PUBLIC

State of New York
County of _____

_____ being duly sworn, deposed and says that he/she is the applicant named within the application: the he/she has read the foregoing application and knows the contents thereof; that the same is true to his/her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he/she believes it to be true.

Notary Public

Authorization for release of information

I, _____, have applied to the New York State Department of Corrections and Community Supervision for a Certificate of Relief from Disabilities/Good Conduct. To facilitate the investigation of my application, I hereby authorize any individual, private business concern, state or federal agency to release to any authorized representative of the Department of Corrections and Community Supervision any information such person, private business concern. State or federal agency may have in its possession concerning me or my activities.

Applicant's Signature: _____ Date: _____

Notary Public