

## **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 as 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, possess, 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).